

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

5 Plaintiff,

Docket No.:  
15 CR 18 (FB)

6 versus

7 CHEVELLE NESBETH,

U.S. Courthouse  
225 Cadman Plaza East  
Brooklyn, NY 11201

8 Defendant.  
9 -----x

June 16, 2015  
10:00 a.m.

11 Transcript of Criminal Cause for Trial

12 Before: HONORABLE FREDERIC BLOCK,  
13 District Court Senior Judge  
14 (and a jury.)

15 APPEARANCES

16 For the Government:

KELLY T. CURRIE, ESQ.  
Acting United States Attorney  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201  
BY: PAUL G. SCOTTI, ESQ.,  
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Assistant U.S. Attorneys

17 For the Defendant:

FEDERAL DEFENDERS OF NEW YORK, INC.  
1 Pierrepont Plaza  
Brooklyn, New York 11201  
BY: AMANDA L. DAVID, ESQ.  
MICHAEL WEIL, ESQ.

18 Also Present:

SHANNON McFADDEN  
MELANIE MORALES  
RANIT PATEL  
MAGDALENA ST. SURIN

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22 Proceedings recorded by mechanical stenography. Transcript  
23 produced by computer-aided transcription.  
24

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1 (In open court.)

2 (Defendant present.)

3 THE COURT: Good morning, everybody.

4 I understand the jurors are all here, Mr. Innelli.

5 THE CLERK: Yes. I will call the case. Criminal  
6 cause on trial, United States of America versus Nesbeth. All  
7 counsel and the parties are present.

8 THE COURT: All right. Everyone ready to get started?  
9 Let's bring the jurors in.

10 THE CLERK: Okay.

11 (Pause.)

12 THE CLERK: All rise.

13 (Jury enters.)

14 THE CLERK: You all may be seated.

15 THE COURT: Good morning, everybody. Good to see you  
16 all again.

17 Just a few things I may have forgot to tell you  
18 yesterday. I'm going to take a mid-morning break at about  
19 11:30-ish or thereabout and a mid-afternoon break. I think  
20 it's probably a good thing to do after we go for an hour, hour  
21 and a half to do that, for a chance to use the facilities. If  
22 anybody is uncomfortable and needs to use the facilities, don't  
23 hesitate. Make believe we are in kindergarten class. I just  
24 want to be sure you are comfortable. So if you need to take a  
25 break, just raise your hand.

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1           Then I forgot inadvertently to give the lawyers an  
2           opportunity to reintroduce themselves. I think you met  
3           everybody at the defense table, but you may not have had the  
4           opportunity to know who is sitting at the government's table.  
5           So we can do that right now.

6           Mr. Scotti, before you start your opening statements  
7           maybe you would like to tell the folks who is with you.

8           MR. SCOTTI: Sure. Good morning, ladies and  
9           gentlemen.

10          As you know from yesterday, my name is Assistant  
11          United States Attorney Paul Scotti. With me yesterday was  
12          Special Agent Shannon McFadden. Two new faces at the table  
13          today are Assistant United States Attorney Elizabeth Geddes and  
14          Magdalena St. Surin, also from the U.S. Attorney's Office.

15          THE COURT: I see, Ms. David, you have the same group  
16          here that you had yesterday; and, if you want to say hello to  
17          the jurors again you can do that, if you would like to.  
18          Otherwise, we can get started.

19          MS. DAVID: Yes, your Honor. My name is Amanda David.  
20          I represent Ms. Chevelle Nesbeth along with Attorney Michael  
21          Weil. Sitting at the table with us is also Intern Ranit Patel  
22          and Paralegal Melanie Morales.

23          THE COURT: Mr. Scotti, are you ready to give your  
24          opening statement?

25          MR. SCOTTI: I am, your Honor.

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1 THE COURT: All right. Go ahead.

2 MR. SCOTTI: On January 6, 2015, the defendant,  
3 Chevelle Nesbeth, smuggled more than \$16,000 of cocaine into  
4 the United States. She was caught, ladies and gentlemen, and  
5 that's why we are here today.

6 The evidence will show that last January, just after  
7 New Years, the defendant boarded a flight in Montego, Bay  
8 Jamaica, headed for John F. Kennedy Airport. With her she had  
9 two matching suitcases. They were light gray roller bags with  
10 the extendible pull handles; and what you will learn is that  
11 the pull handles of both those suitcases were filled with  
12 cocaine.

13 Now, after landing in New York, the defendant was  
14 selected to go to a baggage examination area, and there a  
15 customs and border protection officer asked her a series of  
16 questions. The defendant confirmed that the bags and their  
17 contents were hers and that she had packed the bags herself.

18 The customs officer then searched the two suitcases.  
19 Right away, the customs officer noticed something strange about  
20 the larger suitcase. When he pulled on the extendible handle  
21 of the suitcase, it barely extended from the bag, only maybe  
22 four to five inches. He pulled a few times on it, but it  
23 didn't budge.

24 He unzipped the lining at the bottom of the suitcase  
25 after he emptied out all the belongings, and he used a metal

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1 tool to punch a small hole in the rail of that bag, and it  
2 revealed a white, powdery substance. He also probed the rail  
3 of the smaller bag, revealing the same white, powdery  
4 substance.

5 That powdery substance inside the rails of both the  
6 defendant's bags was cocaine. Between the two suitcases,  
7 ladies and gentlemen, 1.3 pounds of powdered cocaine was  
8 recovered.

9 For smuggling cocaine into the United States the  
10 defendant is charged with two crimes: With importation of  
11 cocaine and possession of cocaine with intent to distribute it.

12 So how will we prove this case to you? First, with  
13 physical evidence. You will see the defendant's suitcases, the  
14 baggage tags with her name on them, the metal rails, and the  
15 cocaine that was found inside. Second, you are going to hear  
16 witness testimony. You will hear from the customs officer. He  
17 will be on that witness stand right over there, and he will  
18 tell you how he found the cocaine and he will tell you about  
19 the obvious defect in the pull handle of the larger bag and how  
20 that immediately raised his suspicion, leading him to  
21 ultimately discover the cocaine.

22 You are also going to hear from a forensic chemist,  
23 who is going to confirm for you that that powdery substance was  
24 cocaine. And you are going to hear from a special agent with  
25 Homeland Security Investigations, who is an expert in narcotics

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1 pricing and distribution. He will tell you that the cocaine  
2 the defendant smuggled into the United States was worth more  
3 than \$16,000. For this much -- and he is also going to tell  
4 you that this much cocaine worth that amount of money has only  
5 one purpose, and that is distribution on the street and not for  
6 personal use.

7 Finally, you will see it on video, ladies and  
8 gentlemen, the defendant's large suitcase with the extendible  
9 pull handle that didn't extend. You will see the moment the  
10 officer found the cocaine in the rails of that pull handle.  
11 You will see it all.

12 Once you have seen and heard all of the evidence in  
13 this case, I'm going to come back up to you and I'm going to  
14 ask you to return the only verdict that is compelled by that  
15 evidence, ladies and gentlemen. That is a verdict of guilty.

16 Thank you.

17 THE COURT: Thank you. All right. Mr. Scotti.

18 Ms. David, do you wish to make an opening statement?

19 MS. DAVID: Yes, your Honor.

20 Good morning, ladies and gentlemen. It's early  
21 January, a few days after New Year's, a week or so after  
22 Christmas. Imagine that you are lucky enough to have escaped  
23 the frigid temperatures here in New York, the slush, the snow,  
24 and be able to still enjoy all the trappings of the holiday  
25 season. You are able to get out of New York, head to the sun,

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1 to the beach, to the Caribbean. It sounds fantastic, right?  
2 It certainly would sound fantastic to a college student on  
3 winter break.

4 For 19-year-old Chevelle Nesbeth, it seemed like a  
5 dream vacation. She got to get away from her academic work,  
6 get away from her part-time job, and go visit her father in  
7 Jamaica for the holidays.

8 But this dream vacation would come to an abrupt end  
9 when she landed back into the United States at JFK on January 6  
10 of 2015, and that would begin an ongoing nightmare. On that  
11 day, when Chevelle Nesbeth came back to the United States, she  
12 knew she was going to have a long commute home. Chevelle is  
13 from and lives in New Haven, Connecticut.

14 She got off the plane -- it was around 10:00 p.m. --  
15 tired and eager to get going. She goes through customs,  
16 nothing unusual happens there. She goes to pick up her bag in  
17 baggage claim. Nothing unusual happens there. She is in a  
18 line when she gets pulled off that line for a secondary  
19 inspection. Still not that unusual to Chevelle, who has been  
20 on international flights before.

21 But when the agent is checking her bag that's when  
22 something unusual happens. She notices that the agent is  
23 (indicating) banging, banging on the inside of her bag. Now,  
24 that felt strange. It looked strange, and that's when Chevelle  
25 becomes confused. Confused because she didn't know, she

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1 couldn't know, and she wouldn't have known that inside the  
2 handrails of the suitcases that she had were bags of cocaine.

3 You will hear during the course of this case -- and  
4 you have already heard from the prosecutor and I have just  
5 mentioned -- where in the bags the cocaine were found and how  
6 those bags were found. The bags of cocaine were not in some  
7 side pocket in her suitcase. They weren't missioned in with  
8 the contents of her suitcase, not in her clothes, not in her  
9 purse, not in anything that Chevelle would have touched,  
10 packed, or seen that day.

11 And you will hear what was actually in the two  
12 suitcases, the things that Chevelle did touch, pack, and see,  
13 things you would expect a 19-year-old on vacation to have:  
14 Clothes, a lot of shoes, souvenirs, but not drugs.

15 And, ladies and gentlemen, you heard how the drugs  
16 were found. They were found because the agent used an  
17 instrument that he used to bang, puncture, and eventually break  
18 open the handles. That is how they are discovered.

19 And why is that important? Because the key issue,  
20 really the ultimate issue in this case for you to decide, is  
21 knowledge: Whether or not Chevelle actually knew that there  
22 were bags of cocaine in the handrails of her suitcase; and,  
23 ladies and gentlemen, after you hear the evidence in this case,  
24 you will learn that she in fact did not.

25 You will hear evidence that the actual bags of cocaine

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1 were vacuum sealed, wrapped up in package tape, and jammed into  
2 those handrails. There was no smell coming from the handrails.  
3 There were no punctured holes in the handrails when Chevelle  
4 had possession of those bags. There was nothing that you could  
5 see about the handrails that showed that they had been altered  
6 in any way. The drugs were hidden from law enforcement, but  
7 they were also hidden from Chevelle herself.

8 That Chevelle possessed those bags, that she packed  
9 those bags, that is not where this story ends. That is not  
10 enough to find her guilty, because the question is whether or  
11 not she knew that those drugs were in the handrails.

12 Ladies and gentlemen, you will see that when Chevelle  
13 is stopped by the agents, she acts in the same manner that you  
14 would expect someone who didn't know to behave. She doesn't  
15 refuse to answer their questions. She doesn't hesitate to  
16 answer their questions. She is not evasive because she has  
17 nothing to hide, because Chevelle doesn't believe that she is  
18 doing anything illegal.

19 Now, the agents arrested Chevelle Nesbeth. That's why  
20 we are here today, but, as Judge Block told you yesterday, the  
21 fact that she was arrested does not mean that she is guilty.  
22 And the fact that she possessed the suitcase with those drugs  
23 in the handrails also doesn't mean that she is guilty. You  
24 will have to find that she knowingly did so.

25 After you hear all the evidence in the case -- and in  
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1 a case like this, you ask yourself, what evidence is lacking --  
2 I am confident that you will come back with the only verdict  
3 that makes sense; and that is one of not guilty.

4 THE COURT: All right. So, folks, you have a sense  
5 now of what this case is all about.

6 As I told you before, the lawyers are advocating.  
7 What they say is not factually established. They are just  
8 advocating for their clients, which they are supposed to do;  
9 and now the bell rings, and you will hear the actual testimony  
10 from the lips of those people who will be called to testify  
11 under oath and from the documents which I will allow into  
12 evidence.

13 So at this time, Mr. Scotti, is the government  
14 prepared to call its first witness?

15 MR. SCOTTI: The government is prepared, your Honor.

16 THE COURT: Who do we have?

17 MR. SCOTTI: Officer Giuseppe D'Andrea from the  
18 Customs and Border Protection.

19 THE COURT: Is he outside?

20 MR. SCOTTI: He is outside, judge.

21 THE COURT: While we are waiting for the witness to  
22 come in, it's the rule of the court that people are not allowed  
23 who are going to testify, to be in the courtroom, to listen to  
24 the trial testimony. They wait outside. It takes a moment to  
25 get them into the courtroom; and that's the way it goes in all

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1 trials. So the idea, of course, is that you don't want the  
2 witness to possibly be influenced by what they hear in the  
3 courtroom. So we have to just be a little patient while we  
4 bring the witnesses in. Presumably it won't take too long.

5 We administer an oath to everybody who testifies. The  
6 oath that I instruct Mr. Innelli to give is just to ask them  
7 whether they affirm to tell the truth. I don't use "under God"  
8 and all of that. Why? Because in Brooklyn especially we have  
9 people of different religious beliefs, and some people are more  
10 comfortable just affirming to tell the truth. So that's the  
11 way we do it. It means the same thing. Once they do that,  
12 they have said that they are going to testify truthfully, as if  
13 an oath were given to them.

14 Go ahead.

15 THE CLERK: Good morning, Officer D'Andrea. Remain  
16 standing and raise your right hand.

17 GIUSEPPE D'ANDREA, called as a witness, having been  
18 first duly sworn/affirmed, was examined and  
19 proceeded to testify as follows:

20 THE CLERK: Thank you. Please have a seat.

21 THE COURT: Mr. Scotti, your witness.

22 THE CLERK: If you could please state and spell your  
23 name, please.

24 THE WITNESS: Giuseppe D'Andrea G-I-U-S-E --

25 THE COURT: So the machine doesn't seem as if it's on.

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D'Andrea - Direct/Scotti

1 Does it?

2 THE CLERK: There you go.

3 THE WITNESS: Giuseppe D'Andrea, G-I-U-S-E-P-P-E  
4 D-apostrophe-A-N-D-R-E-A.

5 THE COURT: So we can hear you fine.

6 The courtroom wasn't constructed -- we ran out of  
7 money so we couldn't put in a proper auditory system here. So  
8 sometimes people with a loud voice sound too loud, and  
9 sometimes with a soft voice have to move a little closer to the  
10 mic. Just check it out by saying, "Good morning, Judge Block,"  
11 and see how you sound.

12 THE WITNESS: Good morning, Judge Block.

13 THE COURT: All right. I think we can all hear you  
14 okay. Go ahead.

15 MR. SCOTTI: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. SCOTTI:

18 Q Good morning, Officer D'Andrea.

19 A Good morning.

20 Q Officer D'Andrea, who do you work for?

21 A Customs and Border Protection.

22 Q Is that also known as CBP?

23 A Yes.

24 Q How long have you worked for CBP?

25 A Six years.

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D'Andrea - Direct/Scotti

1 Q I'm sorry?

2 A Six years.

3 THE COURT: Keep your voice up.

4 Q What is your title?

5 A CBP officer.

6 Q Did you have to attend a training academy when you were  
7 hired by Customs and Border Protection?

8 A Yes.

9 Q What academy did you attend?

10 A FLETC, the Federal Law Enforcement Training Center.

11 Q How long did this training last?

12 A Four months.

13 Q Could you just tell the members of the jury what that  
14 training consisted of?

15 A It basically consisted of customs and immigration law.

16 Q What, if any, law enforcement tactical training did you  
17 receive?

18 A We did arrest techniques, and that's basically it.

19 Q Okay. As a CBP officer is there any particular airport  
20 you are assigned to patrol?

21 A John F. Kennedy International Airport.

22 Q Is that in Queens County?

23 A Yes.

24 Q What are your duties and responsibilities as a CBP officer  
25 working at JFK?

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D'Andrea - Direct/Scotti

1 A Enforce customs and immigrations laws.

2 Q Exactly can you just tell the members of the jury how you  
3 enforce customs and immigration laws at John F. Kennedy  
4 Airport.

5 A We basically inspect passengers, we verify their  
6 documents, we inspect their luggage, their belongings, whatever  
7 they bring into the United States.

8 Q As part of these responsibilities that you have in your  
9 daily job, approximately how many suitcases have you inspected  
10 as a CBP officer in your career?

11 A Thousands.

12 Q And approximately how many suitcases do you inspect in a  
13 day?

14 A Fifteen to twenty a day.

15 THE COURT: How does that work? You know, the jurors  
16 probably are curious, I guess. All of us travel. We have gone  
17 through airport security.

18 Is it just a random selection process? Maybe you can  
19 explain to the jurors so they can see how the process unfolds.

20 THE WITNESS: Yeah. Basically anybody who comes from  
21 overseas is subject to inspection. So anybody can get chosen  
22 for inspection.

23 THE COURT: How do you get chosen? Is it just you  
24 look down the line and you say every fourth person is going to  
25 be inspected?

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D'Andrea - Direct/Scotti

1 I guess I'm personally interested because when I  
2 travel I like to know how I get picked out.

3 THE WITNESS: Yeah, pretty much, depending where you  
4 are coming from.

5 THE COURT: So it's a random type of thing?

6 THE WITNESS: Yeah.

7 THE COURT: So I shouldn't personalize it when I'm  
8 picked out for inspection.

9 THE WITNESS: No.

10 THE COURT: Okay.

11 BY MR. SCOTTI:

12 Q Officer D'Andrea, let me direct your attention to  
13 January 6 of 2015. Were you working on that day?

14 A Yes.

15 Q What shift were you working?

16 A I was working a 4:00-to-midnight shift.

17 Q Which terminal were you assigned to patrol that day?

18 A The JetBlue terminal, which is terminal five.

19 Q And is that an international or a domestic?

20 A It's an international terminal.

21 Q And were you in the arrivals or departures section?

22 A The arrivals.

23 Q Were you in uniform or plainclothes that evening?

24 A I was in uniform.

25 Q What area of terminal five were you stationed?

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D'Andrea - Direct/Scotti

1 A Basically in the arrivals area, everywhere in the arrivals  
2 area.

3 Q What were your responsibilities working at terminal five  
4 that evening?

5 A To inspect travelers and check their suitcases, make sure  
6 they are not carrying anything they shouldn't be.

7 THE COURT: Keep your voice up a little bit. You have  
8 a tendency to swallow it.

9 Have you ever testified before in court?

10 THE WITNESS: No.

11 THE COURT: Ah, no wonder you are speaking so quietly.  
12 Just relax and keep your voice up.

13 THE WITNESS: Thank you.

14 BY MR. SCOTTI:

15 Q On January 6 did you interact with a passenger named  
16 Chevelle Nesbeth?

17 A Yes.

18 Q Do you see her in court here today?

19 A Yes.

20 Q Could you please point to her, indicating an article of  
21 clothing.

22 A She is wearing a black blazer and glasses, a pink shirt.

23 THE COURT: So the record reflects that the witness  
24 has identified the defendant.

25 Q Where was she when you first interacted with her?

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D'Andrea - Direct/Scotti

1 A The control point exit in the baggage claims area.

2 Q And did she have any customs or travel documents with her  
3 at the time?

4 A Yes. She had her passport and her customs receipt.

5 MR. SCOTTI: Your Honor, if I could just approach?

6 THE COURT: Go ahead.

7 Q I would like to show you what's been marked for  
8 identification as Government's Exhibit 9. Just take a look at  
9 that. What is Government's Exhibit 9?

10 A This is a customs receipt.

11 Q When you say "a customs receipt," can you just explain  
12 what that is, for the members of the jury?

13 A It's a receipt that comes out of a kiosk when you go  
14 through primary control.

15 Q In that kiosk what type of information does a passenger  
16 have to put into that kiosk to get that receipt?

17 A Basically they put their passport into the kiosk, and they  
18 answer customs-related questions.

19 Q And is that, what's been marked for identification as  
20 Government's Exhibit 9, in the same or substantially the same  
21 condition as it was on January 6, 2015?

22 A Yes.

23 Q If you can, just looking at the back of it, there are some  
24 handwritten notes. Are those notes that you wrote?

25 A Yes.

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1 Q Those notes, is it fair to say those are notes you wrote  
2 after the defendant was arrested?

3 A Yes.

4 Q And those notes weren't there when you first saw it, when  
5 you first took that receipt from the defendant?

6 A No.

7 MR. SCOTTI: Okay. Your Honor, I would just ask that  
8 Government's Exhibit 9 be moved into evidence.

9 THE COURT: Any objections?

10 MS. DAVID: No objection.

11 THE COURT: All right. So that's the first document  
12 that is going to be allowed into evidence. You see how the  
13 process works. The questions are asked to lay a foundation,  
14 and then it's offered into evidence. If there is an objection  
15 by opposing counsel, then I will have to make a ruling of law.  
16 So you see how the process unfolds.

17 So that's the first document that's in evidence,  
18 Exhibit 9. Go ahead.

19 (Government's Exhibit 9 so marked.)

20 MR. SCOTTI: Thank you, your Honor.

21 BY MR. SCOTTI:

22 Q Officer D'Andrea, just taking a look now at Government's  
23 Exhibit 9, does this declaration indicate what date and time  
24 that it was issued, or that it was completed? I'm sorry.

25 A Yes.

D'Andrea - Direct/Scotti

1 Q What date and time was this completed?

2 A January 6, 2015 at 9:22.

3 Q What else of significance is present on Government's  
4 Exhibit 9?

5 A The defendant's photo and a customs stamp.

6 Q When you say "a customs stamp," where are you referring  
7 to? Is that the stamp that you see that has January 6, 2015 on  
8 it?

9 A Yes.

10 Q What does that stamp indicate?

11 A It indicates that the defendant went through immigration  
12 and was admitted into the United States.

13 Q Is there any information about her flight on this form?

14 A Yes.

15 Q And what information on this form is there, with respect  
16 to her flight?

17 A It's on the bottom right-hand corner, flight number B6780.

18 Q What's flight B6780?

19 A It's a JetBlue flight from Montego Bay, Jamaica.

20 Q Thank you. Officer D'Andrea, getting back to your  
21 interaction with the defendant, how many bags did she have with  
22 her?

23 A She had two roller suitcases with extendible handles and a  
24 satchel.

25 Q And where did you and the defendant go next, after you

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1 first approached her?

2 A We went to the secondary processing area.

3 MR. SCOTTI: Mike, I'm just going to -- I have some  
4 photographs I want to show him on the ELMO that I don't want  
5 published yet.

6 THE CLERK: Go ahead.

7 MR. SCOTTI: Thank you.

8 Q Officer D'Andrea, you mentioned you worked in terminal  
9 five JetBlue international arrivals that evening, right?

10 A Yes.

11 Q I want you to take a look at -- I'm going to show you  
12 Government's Exhibits 5A through F. I want you to take a look  
13 at each of them on your screen. That's 5B. I just showed you  
14 5A. This is 5C. Out of focus. Hold on one second. Okay. So  
15 5C, 5D, 5E, and 5F.

16 Looking at each of these pictures, what generally do  
17 they depict?

18 A This is the JetBlue terminal arrivals area.

19 Q Do each of the photographs marked Government's Exhibit 7A  
20 (sic) through F fairly and accurately depict the way terminal  
21 five appeared on January 6, 2015?

22 A Yes.

23 MR. SCOTTI: Your Honor, at this time I would ask that  
24 Government's Exhibits 5A through F be moved into evidence.

25 THE COURT: A through F, 5A, in evidence, hearing no

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1 objection.

2 (Government Exhibits 5A through 5F so marked.)

3 MR. SCOTTI: Thank you, your Honor.

4 Now, beginning with 5A, if I can have 5A published.

5 THE CLERK: Do you want me to dim the lights a little  
6 bit?

7 MR. SCOTTI: Just a little. I know the jurors have  
8 the screens, which might be a little clearer.

9 THE CLERK: This might help.

10 MR. SCOTTI: Yeah.

11 BY MR. SCOTTI:

12 Q Officer D'Andrea, first looking at 5A, what does 5A  
13 depict?

14 A This is the hallway leading to the primary inspection  
15 area.

16 Q When a passenger is walking down this hallway, where have  
17 they just come from?

18 A The airplane.

19 Q Now looking at 5B, what is depicted in 5B?

20 A These are lines leading to the primary inspection.

21 Q This room, this room that we are looking at now, what  
22 would you call this room?

23 A Primary control.

24 Q Now, you have mentioned before that the Exhibit 9, this  
25 receipt, was generated at a kiosk. Correct?

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D'Andrea - Direct/Scotti

1 A Yes.

2 Q Do you see the kiosks that generate this exhibit,  
3 Government's Exhibit 9, the declaration form?

4 A Yeah. They are in the far back, right corner.

5 Q Are you referring to these right here (indicating)?

6 A Yes.

7 Q Now, just looking at 5C, is that fair to say it's a closer  
8 picture of the kiosk?

9 A Yes.

10 Q Now, after a passenger will receive this receipt, after  
11 they put their passport in and they receive this receipt, where  
12 do they go after here?

13 A They go see an officer.

14 Q Where? What is that called?

15 A It's called primary control.

16 Q The primary control officers, are they stationed in  
17 booths?

18 A Yes.

19 Q Is each booth numbered?

20 A Yes.

21 Q Do you see those numbered booths on this photograph 5C?

22 A Yes.

23 Q Where exactly do you see them?

24 A They are right kind the kiosk.

25 Q Are you referring to these numbers over here, behind the

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1 kiosk?

2 A Yes.

3 Q Now, looking at 5D, what is 5D a picture of?

4 A This is a hallway leading to baggage claim.

5 Q What's on the left, over here, of this hallway?

6 A Those are the primary inspection booths.

7 Q Is this the hallway that after they pass through the  
8 primary inspection they walk down?

9 A Yes.

10 Q Where does this hallway lead to again?

11 A Baggage claim.

12 Q And now 5E, this is a picture of what?

13 A The baggage claim area.

14 Q Okay. And obviously these are the baggage carousels where  
15 passengers would pick up their luggage, correct?

16 A Yes.

17 Q What else is found in that area, that baggage claim area?

18 A Secondary baggage control.

19 Q And are there any other check points there that are  
20 customs-related check points before a passenger would leave the  
21 airport?

22 A Yes.

23 Q What is that called?

24 A It's called a control point.

25 Q After a passenger picks up their luggage from these

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1 carousels where they check the bags, where would they be  
2 directed to?

3 A Baggage control.

4 Q Okay. That's the control point you referred to?

5 A Yes.

6 Q Then at that point, what happens with the passenger? What  
7 are the options then at that point?

8 A They either get chosen for a baggage exam or they exit.

9 Q Now, looking at 5F, is 5F the same room or area that 5E  
10 was taken of?

11 A Yes.

12 Q Obviously, this is a different angle. What does 5F  
13 depict?

14 A This is the control board.

15 Q And if you look in the middle, focusing in there, do you  
16 see some yellow signs on the ceiling?

17 A Yes.

18 Q There is a desk underneath them with an officer?

19 A Yes.

20 Q What is that area right there?

21 A That's actually the control board.

22 Q Also, you will notice, looking at 5F, behind those yellow  
23 signs, it appears to be the entrance to another room. What is  
24 that?

25 A That is secondary processing.



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1 Q What happens in secondary processing?

2 A Baggage exams.

3 Q Now, just looking at -- I have to apologize. I didn't  
4 show you this picture before. Can I just have this switched  
5 off. I left it in my binder and didn't show you this picture.

6 I want to show you what's marked for identification as  
7 5G. Do you recognize 5G?

8 A Yes.

9 Q What do you recognize 5G as?

10 A Secondary processing.

11 Q Does this picture fairly and accurately depict the way the  
12 secondary processing room looked on January 6, 2015?

13 A Yes.

14 MR. SCOTTI: Okay. Your Honor, I would ask to move 5G  
15 into evidence.

16 THE COURT: Any objection?

17 MS. DAVID: No objection.

18 THE COURT: Hearing none, in evidence at this time.  
19 (Government Exhibit 5G so marked.)

20 MR. SCOTTI: Thank you. Here we go. Sorry about  
21 that.

22 Q Looking at 5G, what is 5G a picture of?

23 A Secondary processing.

24 Q You testified this is the room where baggage examinations  
25 occur?

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1 A Yes.

2 Q Looking at these pictures in 5G, where exactly do the  
3 examinations occur?

4 A On top of the tables that you see there.

5 Q You are referring to these tables here (indicating)?

6 A Yes.

7 Q Okay. Okay. Now, getting back to your encounter with the  
8 defendant, what happened when you and the defendant entered the  
9 secondary processing area?

10 MR. SCOTTI: Thank you.

11 THE CLERK: You are welcome.

12 Q What happened when you and defendant entered the secondary  
13 processing room that you just testified you went into?

14 A I verified her belongings.

15 Q Just tell the jury -- tell the jury what that means  
16 exactly, what specifically you do to verify belongings.

17 A If the bags she was carrying were hers, if she packed them  
18 herself, and if everything in the bags were hers.

19 Q Those were all questions that you asked the defendant?

20 A Yes.

21 Q How did she respond to those questions?

22 A Yes.

23 Q And did there come a point where you examined her  
24 suitcases?

25 A Yes.

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1 Q And where were the suitcases placed to be inspected?

2 A On top of the table.

3 Q That's the table we just saw that was depicted in 5G?

4 A Yes.

5 Q Which suitcase -- you said she had two roller bags with  
6 her. Is that correct?

7 A Yes.

8 Q Was there anything that distinguished one from the other?

9 A One was larger.

10 Q Which of the two suitcases did you inspect first?

11 A The larger one.

12 Q Where was the defendant when you examined the -- her  
13 suitcase?

14 A In front of me, across the table.

15 Q Now, just tell the members of the jury how you examined  
16 the larger suitcases you were starting to check.

17 A Well, I opened it, and I check every pocket and I take out  
18 all the contents onto the table, and I inspect the whole bag.

19 Q As you were inspecting the larger suitcase what, if  
20 anything, unusual was there about that bag that immediately  
21 caught your attention?

22 A The handle.

23 Q Please explain what handle you are referring to.

24 A The pull handle on the suitcase.

25 Q What about that pull handle drew your attention?

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1 A It didn't extend fully.

2 Q When you say, "It didn't extend fully," could you describe  
3 what you mean by that?

4 A Well, the handle is supposed to extend out.

5 Q How far did it extend?

6 A About four to five inches.

7 Q Why was this strange to you?

8 A Because it's supposed to extend maybe three times the  
9 length.

10 Q And after noticing that the handle didn't extend, what did  
11 you do?

12 A I got to the bottom of the bag, I unzipped the lining, and  
13 went to the handrails.

14 Q When you say you "went to the handrails," so you unzipped  
15 the lining that exposed the handrails underneath?

16 A Yes.

17 Q Then what did you do at that point?

18 A I grabbed the handle again and I pulled on it, and it  
19 didn't extend. So I took out my probe and I tapped on the  
20 handrail to see if there was anything inside of it.

21 Q When you say you tapped it, what would you -- how would  
22 that tell you whether there was something inside it?

23 A When you tap on it, it's supposed to be a hollow sound,  
24 like a pinging sound.

25 Q What was the sound that you heard when you tapped on it?

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1 A It was more of a clunk.

2 Q What did that tell you?

3 A That there would be probably something inside of it.

4 Q Now, after you heard that sound, what did you do next?

5 A I took my probe and I took -- put the tip of the probe on  
6 top of the handrail, and I punched a hole in it.

7 Q You say you took your probe.

8 A Yes.

9 Q I would just like to -- can you just -- I would like to  
10 show the witness what's been marked as Government's Exhibit 7.  
11 Do you recognize Government's Exhibit 7?

12 A Yes.

13 Q What do you recognize it to be?

14 A My probe.

15 Q Is that a picture of the same probe you used to probe the  
16 defendant's suitcase back on January 6 of 2015?

17 A Yes.

18 Q Does this picture fairly and accurately depict the way it  
19 looked on that date?

20 A Yes.

21 MR. SCOTTI: I just ask that this be moved into  
22 evidence and published to the jury.

23 THE COURT: What exhibit number is that?

24 MR. SCOTTI: It's Exhibit number 7, your Honor.

25 THE COURT: No objection. Into evidence.

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1 (Government Exhibit 7 so marked.)

2 Q Was this the probe that you first used to tap the rails?

3 A Yes.

4 Q What is this probe made of?

5 A It's metal.

6 Q Is this then a probe that you used to check the inside of  
7 the rail?

8 A Yes.

9 Q Now, could you just describe to the jury how you used that  
10 probe to check the rail.

11 A I just took it and put the tip right onto the metal  
12 railing, and I just punched a hole in it.

13 Q And where was the defendant when you probed the rail?

14 A Across from me.

15 Q After you punched that hole into the rail, afterwards,  
16 what, if anything, did the defendant say to you?

17 A Nothing.

18 Q I'm sorry?

19 A Nothing. She didn't say anything.

20 Q Did she ask why you just punched a hole in your bag?

21 A No.

22 Q What observations did you make after you punched this hole  
23 in the railing?

24 A There was a white, powdery substance.

25 Q What did you suspect that that substance was?

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1 A Cocaine.

2 Q Did you tell the defendant at that point what you had  
3 found?

4 A No.

5 Q Why not?

6 A It's because there was another inspection going on on the  
7 other table.

8 Q Where was that in relation to you?

9 A Behind me.

10 Q What did that -- what significance did that have for you?

11 A I don't know who she is traveling with or who the person  
12 was. I just would rather go into a controlled environment.

13 Q After you discovered this in the rails of the larger  
14 suitcase, what did you do next?

15 A I packed her belongings and I proceeded to check the other  
16 suitcase.

17 Q Did the smaller suitcase also have an extendible pull  
18 handle?

19 A Yes.

20 Q Did you check that pull handle, to pull on it?

21 A Yes.

22 Q How would you describe the length of the pull handle on  
23 the smaller bag?

24 A It was three times the size.

25 Q Would you describe it as normal?

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1 A Yes.

2 Q After you finished examining both bags, what action did  
3 you take with respect to the defendant?

4 A Can you repeat the question, please?

5 Q Sure. After you finished examining both of the bags what  
6 did you do with the defendant?

7 A Took her to a private room.

8 Q Did there come a time when you probed the extendible rail  
9 of the smaller bag?

10 A Yes.

11 Q Where did you do that?

12 A In the room.

13 Q What part of the smaller bag did you probe?

14 A The top handle.

15 Q When you say "handle," are you referring to the handle or  
16 the rails?

17 A The rails, the top handle part of the rails.

18 Q What did you find in the rail, the top rail of the smaller  
19 bag?

20 A A white, powdery substance.

21 Q Officer D'Andrea --

22 MR. SCOTTI: May I approach the witness, your Honor?

23 THE COURT: You may.

24 Q Mr. D'Andrea, I want to show you what's been marked for  
25 identification as Government's Exhibit 17A through C. Do you

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1 recognize that CD?

2 A Yes.

3 Q What's on that CD?

4 A My initials and the date.

5 Q I mean what's actually -- if you played the CD what would  
6 be on it?

7 A It's the encounter.

8 Q Okay. 17A, is that -- does that depict your search of  
9 defendant's bag?

10 A Yes.

11 Q Does that 17A have sound with it?

12 A Yes.

13 Q 17B, is that a different angle of your search?

14 A Yes.

15 Q Does that have sound with it?

16 A No.

17 Q And 17C, is that an video of the baggage carousel area?

18 A Yes.

19 Q 17A, B, and C, do they fairly and accurately depict the  
20 defendant in terminal five JFK Airport on the evening of  
21 January 6, 2015?

22 A Yes.

23 MR. SCOTTI: Your Honor, I would just ask that  
24 Government's 17A through C be moved into evidence?

25 THE COURT: 17A through G?

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1 MR. SCOTTI: C, your Honor.

2 THE COURT: A through C. All right. No objection. A  
3 through C in evidence.

4 (Government Exhibits 17A through C so marked.)

5 MR. SCOTTI: Your Honor, at this time I would like to  
6 publish to the jury, starting with Exhibit 17A.

7 THE COURT: Go ahead.

8 (Recording played.)

9 Q I'm going to pause it for a second, Officer D'Andrea. I  
10 will back it up to where it starts. First, looking at it in  
11 freeze frame right now, where is this?

12 A This is secondary processing.

13 Q Are those the tables you were referring to where you do  
14 the searches?

15 A Yes.

16 (Recording played.)

17 Q Now, right there, it sounds as if you asked several  
18 questions. What questions did you ask right there?

19 A If these bags were hers, if she packed them herself.

20 Q How did she respond to those?

21 A Yes.

22 Q Then you asked another question?

23 A How much money she was carrying.

24 Q Is that a routine question you ask any passenger when you  
25 are doing these searches?

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1 A Yes.

2 MR. SCOTTI: Continuing on.

3 (Recording played.)

4 Q Are you just confirming with her?

5 A Yes.

6 (Recording played.)

7 Q Now, at this point there was some discussion going on  
8 between you and the defendant. What was that discussion about  
9 that we just heard?

10 A The purpose of her trip.

11 Q What did she tell you the purpose of her trip was?

12 A She said she went to Montego Bay and then Kingston, to  
13 visit her father.

14 Q This video is fairly long, and from this point in the  
15 video what do you do with the larger bag?

16 A I open it and I inspect it.

17 Q By inspecting it you emptied the belongings?

18 A Yes.

19 MR. SCOTTI: Now I just want to skip ahead to two  
20 minutes and 36 seconds in, and looking there.

21 (Recording played.)

22 Q Now, at this point, what are you doing?

23 A I'm unzipping the lining of the suitcase.

24 Q Why are you unzipping the lining at that point?

25 A Because there is a tendency to hide stuff underneath the

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1 lining of the suitcase.

2 (Recording played.)

3 Q Just there, what did we just see you do there?

4 A I pulled on the handle.

5 Q What happened when you pulled on the handle?

6 A It only extended a few inches.

7 (Recording played.)

8 Q That sound we heard, what was that?

9 A That was the handrail.

10 Q That was you tapping on it with your tool?

11 A Yes.

12 (Recording played.)

13 Q Now, just then, you could hear the defendant say something  
14 to you at that point. What did she say to you?

15 A "Is there something wrong?"

16 Q What did you say?

17 A "Nope."

18 (Recording played.)

19 Q Now, at this point what did you notice?

20 A A white, powdery substance.

21 Q Could you just describe -- you just saw it on video --  
22 could you describe how much force you used to punch a hole in  
23 that rail?

24 A It's pretty, pretty hard.

25 Q And after you punched the hole in the rail what, if

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1 anything, did the defendant say to you?

2 A Nothing.

3 Q Prior to that, had you and the defendant been talking?

4 A Yes.

5 (Recording played.)

6 MR. SCOTTI: Can you just look -- that's okay.

7 Withdrawn.

8 (Recording played.)

9 MR. SCOTTI: At this point --

10 THE COURT REPORTER: I can't hear you.

11 MR. SCOTTI: I apologize. I just ask -- I'm stating  
12 the obvious at this point. He is looking at the small bag.

13 (Recording played.)

14 Q You are also seen looking around here. At this point what  
15 are you looking around for?

16 A I'm looking for members of my team.

17 Q Why?

18 A To let them know something was going on.

19 Q The person behind you, if you can just explain to the jury  
20 what's happening behind you on this video.

21 A Well, there is another officer behind me, inspecting  
22 another traveler.

23 Q Is that officer on your team?

24 A No.

25 Q Do you know if the person, the bag, the passenger behind

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1 you whose bag is being searched by that officer, is that person  
2 also just off the flight from Montego Bay?

3 A Yes.

4 (Recording played.)

5 Q Just then, what did you do with the small bag?

6 A I extended the handrail.

7 Q How would you describe the way it extended?

8 A Pretty far, normal.

9 (Recording played.)

10 Q Now, after you finished searching the small bag, at that  
11 point what did you do?

12 A I tried to get my team members' attention.

13 MR. SCOTTI: Once you did -- I'm going to start it up.  
14 I'm going to skip towards the end at this point.

15 (Recording played.)

16 Q Where is she being brought to at this point?

17 A A private search room.

18 Q I would like to go back to one other clip that I skipped,  
19 about five minutes and 13 seconds. Was this after you had  
20 finished searching both bags?

21 A Yes.

22 Q What is that that you are standing next to?

23 A It's the larger suitcase.

24 MR. SCOTTI: Okay. I will play it from here.

25 (Recording played.)

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1 Q There, how did you pick the suitcase up?

2 A I grabbed it by the pull handle.

3 Q Is that the farthest it extended?

4 A Yes.

5 Q Now, looking at -- this should be Government's Exhibit  
6 17B. Is this that second angle of the inspection that you told  
7 us about?

8 A Yes.

9 Q Obviously this is a closer and clearer view of the  
10 inspection. Would you agree?

11 A Yes.

12 MR. SCOTTI: I just want to show a brief clip from  
13 this.

14 (Recording played.)

15 Q Now, after you did that where -- just looking at it, where  
16 are the defendant's hands now?

17 A In her pockets.

18 Q Prior to that where were her hands?

19 A On the suitcase.

20 Q Again, after you punched it what, if anything, did she say  
21 to you?

22 MS. DAVID: Objection, your Honor.

23 THE COURT: Overruled. You can answer.

24 A Nothing.

25 MR. SCOTTI: Now, I want to go to 17C. I'm going to

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1 move ahead to about 33 minutes, 32 minutes and 30 seconds.

2 (Recording played.)

3 Q Now looking at 17C, do you see the defendant in this  
4 video?

5 A Yes.

6 Q Where is she in this video?

7 A She is standing by the carousel, in front of the balding  
8 man, on the right.

9 Q Is this her right there?

10 A Yes.

11 MR. SCOTTI: And I just want to play this here.

12 (Recording played.)

13 Q Are those the two bags that you would search a short time  
14 later?

15 A Yes.

16 MR. SCOTTI: Now, I just want to show you -- if I  
17 could switch to the ELMO.

18 THE CLERK: Is it for identification, or is it in  
19 evidence?

20 MR. SCOTTI: For identification, yeah.

21 THE CLERK: Okay.

22 Q Just taking a look at Government's Exhibit 20, do you  
23 recognize that?

24 A Yes.

25 Q What is Exhibit 20?

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1 A It's the defendant walking with her suitcases.

2 Q Is this a still clip of the video that you just observed  
3 in 17C?

4 A Yes.

5 Q Does it fairly and accurately depict the video, the  
6 portion of the video that it's a clip of, on 17C?

7 A Yes.

8 MR. SCOTTI: Your Honor, I ask that this be moved into  
9 evidence.

10 THE COURT: All right, at this time in evidence.

11 (Government Exhibit 17C so marked.)

12 MR. SCOTTI: And published to the jury.

13 (Published.)

14 MR. SCOTTI: We can bring the lights up. Thank you  
15 very much.

16 THE CLERK: You are welcome.

17 Q Officer D'Andrea, did there come a time when you conducted  
18 a field test of the powdery substance that you found in the  
19 rails of the larger suitcase?

20 A Yes.

21 Q When was that? Where did you conduct that test?

22 A In the private search room.

23 Q Was that the room that you -- we saw you as you were  
24 leading the defendant to in the videos that we watched?

25 A Yes.

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1 Q And what were the results of the field test that you  
2 conducted?

3 A Positive.

4 Q For what?

5 A Cocaine.

6 Q Did there come a time when agents from the Department of  
7 Homeland Security Investigations, or HSI, were notified about  
8 this arrest?

9 A Yes.

10 Q Did you come in contact with HSI agents that evening?

11 A Yes.

12 Q Where did you first come into contact with them?

13 A Outside of the search room.

14 Q When they arrived where did they go?

15 A Inside of the search room.

16 Q Where did you go?

17 A Outside of the search room.

18 Q Did there come a time where they came out of the search  
19 room?

20 A Yes.

21 Q Who was with them?

22 A The defendant.

23 Q Where did they bring the defendant?

24 A To HSI processing center.

25 Q Where is that?

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1 A It's in terminal four at JFK.

2 Q Where did you go after they left the defendant?

3 A I followed them.

4 Q Did you go with them, or separately?

5 A Separately.

6 Q What did you bring with you to the HSI facility?

7 A Her suitcases, the evidence.

8 Q Once she got to that facility, what did you do with the  
9 defendant's belongings when you got to the HSI processing  
10 facility?

11 A I inventoried them.

12 Q When you say inventoried, can you explain to the jury what  
13 you mean by that?

14 A Basically all her articles, her clothing, everything that  
15 she had, was written down and inventoried.

16 Q And when you removed her belongings, what did you put them  
17 in?

18 A In boxes.

19 Q Did there come a time where you completely removed the  
20 rails from the defendant's suitcase?

21 A Yes.

22 Q Where was that done?

23 A In the -- there is a room in the processing center for  
24 HSI, where that stuff is completed.

25 Q What did you do with the rails when you removed them from

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1 the suitcase?

2 A They were weighed.

3 Q What was the purpose of weighing them?

4 A So they can be -- it can be accounted for, see how much  
5 weight it had, and for evidence purposes.

6 Q After they were weighed, what -- were they weighed -- I'm  
7 sorry.

8 Were they weighed together or separately?

9 A They were separate.

10 Q So the rails from the large bag were weighed, correct?

11 A Yes.

12 Q And then the rails from the small bag?

13 A Yes.

14 Q After the rails from the large bag were weighed, what  
15 happened with them?

16 A They were put in evidence bags and sealed.

17 Q How was the bag sealed?

18 A With a heat seal.

19 Q I'm sorry what?

20 A Heat sealed.

21 Q After the rails from the small bag were weighed what  
22 happened with them?

23 A They were also bagged and heat sealed.

24 MR. SCOTTI: I would like to show you, just for  
25 identification, what's been marked Government's Exhibit 19.

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1 THE CLERK: A or B?

2 MR. SCOTTI: I'm sorry, 19A.

3 Q Do you recognize Government's 19A?

4 A Yes.

5 Q What do you recognize that to be?

6 A Those are handrails from the bigger suitcase.

7 Q Does what's depicted in 19A fairly and accurately depict  
8 the rails from the larger suitcase after they were removed from  
9 the suitcase and placed in an evidence bag and sealed?

10 A Yes.

11 MR. SCOTTI: Your Honor, at this time I ask that 19A  
12 be moved into evidence.

13 THE COURT: Hearing no objection, it's in evidence.  
14 (Government's Exhibit 19A so marked.)

15 MR. SCOTTI: Now -- I'm sorry. I'm going to show him  
16 another picture and then publish them.

17 Q Now looking at 19B that's been marked for identification,  
18 do you recognize 19B?

19 A Yes.

20 Q What do you recognize 19B as?

21 A The handrails from the smaller suitcase.

22 Q And are the handrails from the smaller suitcases in that  
23 bag, does that picture fairly and accurately depict the way the  
24 handrails looked on January 6, 2015, after the rails from the  
25 smaller bag were placed in an evidence bag and sealed?

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1 A Yes.

2 MR. SCOTTI: I now ask that 19B be moved into evidence  
3 and that it be published to the jury.

4 THE COURT: All right. In evidence.

5 (Government Exhibit 19B so marked.)

6 (Published.)

7 Q Now, Officer D'Andrea, you are looking at 19A, the rails  
8 from the larger suitcase first, and then 19B, the rails from  
9 the smaller suitcase. Can you just explain to the jury how you  
10 are able to distinguish or how you are able to tell that 19A is  
11 a picture of the rails from the larger suitcase?

12 A They were less handrails.

13 Q Why does -- and why does that tell you they are from the  
14 larger bag?

15 A Because the handle did not extend fully.

16 Q There were fewer rails when you removed the rails from the  
17 larger bag?

18 A Yes.

19 Q Here are the rails that you removed from the smaller bag?

20 A Yes.

21 Q Now, once the rails from each of the suitcases were  
22 bagged, who did you give them to?

23 A They are turned over to HSI.

24 Q After HSI gets them where did they go?

25 A They are turned over to the DEA.

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1 Q The DEA lab, for analysis?

2 A Yes.

3 MR. SCOTTI: Now -- I'm sorry. Judge, I'm not  
4 leaving. I just need to get the evidence in here.

5 (Pause.)

6 Q Sir, I'm going to show you what's been marked for  
7 identification as Government's Exhibit 1.

8 MR. SCOTTI: Your Honor, may I approach?

9 THE COURT: Go ahead.

10 MR. SCOTTI: Thank you.

11 Q I want you to take a look at Government's Exhibit 1 and  
12 tell the jury what it is.

13 A These are the handrails from the larger suitcase.

14 Q And how were you able to tell that that bag contains the  
15 handrails from the larger suitcase?

16 A Well, the custody receipt has my name on it.

17 Q Well, looking at what's inside now of Government's  
18 Exhibit 1, is that in the same or substantially the same  
19 condition as it was back on January 6?

20 A No.

21 Q What's different about it?

22 A The handrails are cut open.

23 Q What else is inside the bag?

24 A Cocaine.

25 Q And other than the fact that the rails have been opened

MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

D'Andrea - Direct/Scotti

1 and the cocaine is now exposed, is Government's Exhibit 1,  
2 other than that, in substantially the same condition?

3 A Yes.

4 MR. SCOTTI: Your Honor, at this time we would ask  
5 that Government's Exhibit 1 be moved into evidence.

6 THE COURT: All right. There is no objection it's in  
7 evidence at this time.

8 (Government Exhibit 1 so marked.)

9 Q Now, looking at Government's Exhibit 2 for identification,  
10 what do you recognize that to be?

11 A These are the handrails from the smaller suitcase.

12 Q How do you know that?

13 A Because the custody receipt has my name on it.

14 Q Is what's inside of Government's Exhibit 2 now in the same  
15 or substantially the same condition as it was when you  
16 recovered the rails from the small bag on January 6, 2015?

17 A No.

18 Q How is it different?

19 A The cocaine was removed from the handrails.

20 Q Other than that, is it in -- do you recognize it as in  
21 substantially the same condition?

22 A Yes.

23 MR. SCOTTI: Your Honor, I would ask that Government's  
24 Exhibit 2 be now moved into evidence.

25 THE COURT: It's in evidence.



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1 (Government Exhibit 2 so marked.)

2 MR. SCOTTI: Your Honor, at this time I would just  
3 like to publish for the jury Government's Exhibits 1 and 2.

4 THE COURT: All right. You can show it to them.

5 Members of the jury, during your deliberations you can  
6 have access to all the exhibits. We allow counsel to show them  
7 to you at this time as they are being offered into evidence,  
8 but if you wish to see them during your deliberations they will  
9 be available to you.

10 MR. SCOTTI: This is Exhibit 2, and this is Exhibit 1  
11 from the larger bag.

12 (Published.)

13 BY MR. SCOTTI:

14 Q Now, after the rails were removed, what happened with the  
15 suitcases?

16 A I handed it over to HSI.

17 MR. SCOTTI: I'm going to show you first what's been  
18 marked Government's Exhibit 4.

19 THE COURT: I take it that's the small suitcase.  
20 Right?

21 Q Do you recognize this as the small suitcase?

22 A Yes.

23 Q Is this the same or substantially the same as when you  
24 removed the rails on January 6, 2015?

25 A Yes.

D'Andrea - Direct/Scotti

1 THE COURT: I suspect it's not going to be any  
2 objection. We will move it into evidence as the small  
3 suitcase.

4 (Government Exhibit 4 so marked.)

5 MR. SCOTTI: Now, the same for the larger suitcase,  
6 Government's Exhibit 3.

7 THE COURT: Is that what's known as the larger  
8 suitcase? It's a little larger than the other one, I guess.  
9 Is that the one?

10 MR. SCOTTI: Yes, your Honor.

11 THE COURT: Officer, do you recognize that?

12 MR. SCOTTI: Yes.

13 THE COURT: Moved into evidence.

14 MR. SCOTTI: Thank you, your Honor.

15 (Government Exhibit 3 so marked.)

16 Q Looking at the larger suitcase here, if you can just take  
17 a look, what, if any, identifying tags are there on the handle?  
18 Not the extendible handle but the handle of the suitcase.

19 A There is actually an airline bag tag.

20 Q On the airline bag tag is there a name indicated on it?

21 A Yes.

22 Q What's the name?

23 A Chevelle Nesbeth.

24 Q Is there any personal identification tag on the handle of  
25 Government's Exhibit 3?

D'Andrea - Direct/Scotti

1 A Yes.

2 Q What is that tag?

3 A It has the defendant's name, Chevelle Nesbeth.

4 Q Does it have any other personal identification information  
5 on there?

6 A Her address, her phone number, and her email.

7 Q Thank you. Are those tags, both of those, in the same or  
8 substantially the same condition as they were on January 6,  
9 2015 when you secured that evidence?

10 A Yes.

11 THE COURT: Maybe we should take our mid-morning break  
12 now, for about 15 minutes, before you complete his direct  
13 examination, which I imagine will take another 10 or 15  
14 minutes, I guess.

15 MR. SCOTTI: I'm almost finished, your Honor.

16 THE COURT: All right. If you think you can do it in  
17 the next minute or so, I will let you go ahead.

18 MR. SCOTTI: Yeah. I'm almost finished. Thank you.

19 Q Officer D'Andrea, you said that when you got back to the  
20 HSI facility you inventoried all of the defendant's belongings.

21 A Yes.

22 Q Did that include her boarding pass from the flight from  
23 Montego Bay, Jamaica to JFK?

24 A Yes.

25 MR. SCOTTI: I'm going to show you what's been marked

D'Andrea - Direct/Scotti

1 as Government's Exhibit 13.

2 THE CLERK: For identification?

3 MR. SCOTTI: For identification.

4 Q Could you just take a look at that and tell me if you  
5 recognize that.

6 A Yes.

7 Q What do you recognize that to be?

8 A It's a boarding pass.

9 Q There is also a sticker attached to the side here. What  
10 does that sticker indicate to you?

11 A That is a baggage tag.

12 Q Is Government's Exhibit 13 in the same or substantially  
13 condition now as it was back on January 6, 2015?

14 A Yes.

15 MR. SCOTTI: I just now ask that this be moved into  
16 evidence and published it to the jury.

17 THE COURT: 13?

18 MR. SCOTTI: 13.

19 THE COURT: It's in evidence at this time. Go ahead.

20 (Government Exhibit 13 so marked.)

21 (Published.)

22 Q And looking at Government's 13, it indicates the flight  
23 date here; is that correct?

24 A Yes.

25 Q The boarding time right, here?

D'Andrea - Direct/Scotti

1 A Yes.

2 Q And the defendant's name, of course?

3 A Yes.

4 Q This is that baggage sticker you are referring to here?

5 A Yes.

6 MR. SCOTTI: Thank you.

7 Your Honor, if I could just have one moment.

8 (Pause.)

9 MR. SCOTTI: Your Honor, I have no further questions  
10 at this time.

11 THE COURT: All right. So this will be a good time to  
12 take our morning break, about 15 minutes.

13 Don't talk about the case. You can speak to each  
14 other about anything you want, except about the case. You  
15 won't do that until all of you are together at the end of  
16 trial, after I tell you to start your deliberations. Then you  
17 can all talk to each other.

18 In the meantime, just enjoy your 15 minutes. We will  
19 see you then.

20 THE CLERK: All rise.

21 (Jury exits.)

22 (Recess.)

23 o O o

Certified to be a true and accurate transcript.

24 /s/ Michele Nardone

MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

25

MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

D'Andrea - Direct/Scotti

1 (In open court.)

2 (Jury in at 11:55 a.m.)

3 THE COURT: Cross-examination now, Ms. David.

4 MS. DAVID: Yes, your Honor.

5 THE COURT: Go ahead.

6 CROSS-EXAMINATION

7 BY MS. DAVID:

8 Q Good morning, Officer D'Andrea.

9 A Good morning.

10 Q You mentioned on direct that you've been a Customs and  
11 Board Patrol officer for six years?

12 A Yes.

13 Q During that time, you said that you would estimate that  
14 you conducted about a thousand cases, correct?

15 A Yes.

16 Q You mentioned on direct also that you received some  
17 training for this position?

18 A Yes.

19 Q And I believe you said you trained at the federal law  
20 enforcement training center?

21 A Yes.

22 Q And that was for a set period of time?

23 A Yes.

24 Q Apart from that, you have also received some I guess you  
25 can call it on-the-job training?

ALLAN R. SHERMAN, CSR, RPR Official Court Reporter

D'Andrea - Cross/David

1 A Yes.

2 Q In terms of other colleagues talking to you about their  
3 work as well?

4 A Yes.

5 Q And part of that training includes basically how to detect  
6 contraband in luggage, right?

7 A Yes.

8 Q Looking for anything that you would find suspicious in  
9 someone's luggage?

10 A Yes.

11 Q And you were trained on what types of places to look in,  
12 right?

13 A Yes.

14 Q And there are also these sort of like intelligence  
15 bulletins that tell you about different cases that people might  
16 have contraband in?

17 A Yes.

18 Q And when some of your colleagues find contraband, they  
19 often call you or other folks over to show you where it was  
20 found?

21 A Yes.

22 Q There are some instances where someone comes in with a  
23 suitcase and they have what would be referred to as a false  
24 bottom, right?

25 A Yes.

D'Andrea - Cross/David

1 Q What is a false bottom?

2 A Basically the bottom of the suitcase is altered and they  
3 load it with contraband.

4 Q And sometimes people have contraband in food containers  
5 that they come into the country with?

6 A Yes.

7 Q For instance, in a container of flour, there might be  
8 drugs in there?

9 A Yes.

10 Q And some people are even caught swallowing pellets of  
11 drugs, correct?

12 A Yes.

13 Q Now, as part of your job, you also look at -- sometimes  
14 you look at flight patterns of the passengers when they come  
15 in?

16 A Yes.

17 Q To see whether or not there is anything suspicious about  
18 their flight patterns?

19 A Yes.

20 Q And if they traveled back and forth numerous times from  
21 the same country?

22 A Yes.

23 Q In this case you looked at Miss Nesbeth's travel  
24 documents, right?

25 A Yes.



D'Andrea - Cross/David

1 Q And from her travel documents -- one of the travel  
2 documents was obviously her passport, right?

3 A Yes.

4 Q And in those travel documents you learned that she was  
5 actually born in Jamaica?

6 THE COURT: It might just be my ears but it sounds a  
7 little bit on the loud side. Maybe you can move the microphone  
8 away. I'm sorry we have these problems but it's just the way  
9 it is.

10 Q So from these travel documents, you actually learned that  
11 they was actually born in Jamaica, right?

12 A Yes.

13 Q You said on January 6, on direct, you went over that the  
14 defendant had two suitcases that day, correct?

15 A Yes.

16 Q And those are the two exhibits that the government showed  
17 you earlier?

18 A Yes.

19 Q When you first saw Miss Nesbeth, she was standing in a  
20 line, right?

21 A Yes.

22 Q And you pulled her off of that line for secondary  
23 inspection?

24 A Yes.

25 Q When you pulled her off of the line for secondary

D'Andrea - Cross/David

1 inspection, you took her to that same area that the government  
2 showed you on direct in the pictures?

3 A Yes.

4 Q At that point you went through both bags, right?

5 A Yes.

6 Q Now, in the first bag you go through, you took out all of  
7 her belongings, right?

8 A Yes.

9 Q And you look through all of the pockets of the suitcase,  
10 right?

11 A Yes.

12 Q All of the different compartments, right?

13 A Yes.

14 Q And you don't find any contraband or any powdered  
15 substance in any of the different compartments, right?

16 A Well, no.

17 Q And it wasn't until you at some point unzip the lining of  
18 her larger suitcase, right?

19 A Yes.

20 Q That's when you get access to the handrails?

21 A Yes.

22 Q Initially you don't see anything, right, when you open up  
23 the lining and see the handrails?

24 A No. I don't.

25 Q At that point you said that you used that instrument, the

D'Andrea - Cross/David

1 metal instrument that the government showed you, to tap the  
2 handrails, right?

3 A Yes.

4 Q It's after you start tapping the handrails that Chevelle  
5 asked you is anything wrong, right?

6 A Yes.

7 Q Then after that, you start banging on the handrails or  
8 putting more pressure with the same instrument?

9 A As I tapped it, I already knew this. I don't recall  
10 exactly when that was.

11 Q Sure.

12 I'm going to show you part of what is already in  
13 evidence as Government's Exhibit 17 A.

14 (Whereupon, a videotape was played.)

15 Q So that is part of the video where you are applying more  
16 pressure basically on the bag?

17 A Yes.

18 Q And that was after you already started tapping on it?

19 A Correct.

20 Q In all the time that you've been a customs agent, you said  
21 that you probably searched about thousands of suitcases, right?

22 A Yes.

23 Q And of those thousands of suitcases, how many bags have  
24 you inspected where you found drugs in the suitcase?

25 A Once prior to this.

D'Andrea - Cross/David

1 Q Were you present when the drugs are actually removed from  
2 the handrails?

3 A No.

4 Q During the course of the same Government's Exhibit 17 A,  
5 you mentioned on direct that you were talking with Chevelle,  
6 correct?

7 A Yes.

8 Q You were asking her questions?

9 A Yes.

10 Q She was answering those questions?

11 A Yes.

12 Q And some of the questions you were asking her where things  
13 like where was it that she visited, correct?

14 A Correct.

15 Q You also got into a conversation with her about whether or  
16 not she was employed, right?

17 A Yes.

18 Q And she told you that she works at a spa, correct?

19 A Yes.

20 Q And you also asked her questions about her father, right?

21 A Yes.

22 Q And she was trying to explain to you what her father did  
23 for a living?

24 A Yes.

25 Q Then after you had banged on the inside of the suitcase,

D'Andrea - Cross/David

1 you asked about the repacked suitcase, right?

2 A Yes.

3 Q And she does repack the suitcase, right?

4 A Yes.

5 Q Inside of her -- inside of the actual suitcases basically  
6 both of the bags were filled with women's clothing, right?

7 A Yes.

8 Q There was a lot of clothes, right?

9 A Yes.

10 Q And shoes?

11 A I don't recall how many shoes but there were.

12 Q There were shoes.

13 And that was in both the carry-on bag, right?

14 A Yes.

15 Q As well as the checked bag?

16 A Yes.

17 Q And there were also perishables, correct?

18 A Yes.

19 Q At some point was Miss Nesbeth searched?

20 A Yes.

21 Q And there was never any money recovered from her, correct?

22 A Not that I recall.

23 Q But she did have a bank card, right?

24 A Not that I recall.

25 Q Were you the one that actually searched Miss Nesbeth?

D'Andrea - Cross/David

1 A No.

2 MS. DAVID: Can I have one moment, your Honor?

3 THE COURT: You may.

4 (Pause.)

5 MS. DAVID: I have no further questions.

6 THE COURT: Any redirect?

7 MR. SCOTTI: Just briefly, judge.

8 REDIRECT EXAMINATION

9 BY MR. SCOTTI:

10 Q Officer D'Andrea, on cross-examination you were asked a  
11 lot about all of your experience in searching bags.

12 With respect to this particular bag, what was it that  
13 drew your attention to the rails? What was the first thing  
14 that drew your attention to the rails?

15 MS. DAVID: Objection, your Honor.

16 THE COURT: I'll allow it.

17 A That the handle did not extend.

18 Q What, if anything, did all of your training do to allow  
19 you to realize that the handrails didn't extend?

20 A Any normal person would know that the handrail was not  
21 extending and there shouldn't be a reason why. We don't get  
22 trained in handrails.

23 MR. SCOTTI: Nothing further, your Honor.

24 THE COURT: Anything else?

25 MS. DAVID: No, your Honor.

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D'Andrea - Redirect/Scotti

1 THE COURT: You may step down.

2 Thank you very much.

3 We have another witness available?

4 MR. SCOTTI: I'm sorry, the next witness is Michael  
5 White. He is a forensic chemist with the drug enforcement  
6 agency.

7 THE COURT: Is he waiting outside?

8 MR. SCOTTI: He is, your Honor.

9 THE COURT: Bring him in.

10 (Witness excused.)

11 MICHAEL WHITE, called as a witness, having been  
12 first duly sworn/affirmed, was examined and  
13 proceeded to testify as follows:

14 THE COURT: Please state and spell your name for the  
15 record.

16 THE WITNESS: My name is Michael White, M-I-C-H-A-E-L  
17 W-H-I-T-E.

18 DIRECT EXAMINATION

19 BY MR. SCOTTI:

20 Q Good afternoon, Mr. White.

21 A Good afternoon.

22 Q Where do you work?

23 A With the Drug Enforcement Administration.

24 Q And do you work for a particular unit or a division of the  
25 DEA?

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White - Direct/Scotti

1 A I do, the Northeast Laboratory.

2 Q What is your title with the Drug Enforcement  
3 Administration?

4 A I'm a forensic chemist.

5 Q And how long have you been a forensic chemist with the  
6 Northeast Lab?

7 A A little over two and a half years.

8 Q Could you tell the members of the jury what your duties  
9 are as a forensic chemist working with the DEA?

10 A Sure.

11 I analyze evidence for the presence or the lack  
12 thereof of controlled substances.

13 I write reports based upon my findings as well as  
14 provide field and training support for state, local and federal  
15 law enforcement agencies.

16 Q How many analyses of controlled substances have you  
17 conducted in your career?

18 A Roughly 400.

19 Q Just please tell the members of the jury what your  
20 educational background is prior to joining the DEA lab?

21 A I have a bachelors of science degree in forensic and  
22 investigative sciences from Purdue University School of Science  
23 with a concentration in chemistry.

24 Q In addition to your formal education, what other training,  
25 if any, have you received in the field of forensic chemistry?

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White - Direct/Scotti

1 A I have attended the DEA 17 week basic forensic chemist  
2 course in Quantico, Virginia.

3 Q And over your career, how many analyses of controlled  
4 substances would you say you have actually performed?

5 A Roughly 400.

6 MR. SCOTTI: Your Honor, at this time the government  
7 moves to qualify Michael White as an expert witness in forensic  
8 drug chemistry.

9 THE COURT: Ms. David, no exception to that, I take  
10 it?

11 MS. DAVID: No, your Honor.

12 THE COURT: Go ahead.

13 MR. SCOTTI: Your Honor, if I may approach the  
14 witness.

15 THE COURT: Go ahead.

16 Q Mr. White, I'm going to hand you what is in evidence as  
17 Government's Exhibit 1.

18 I just want you to take a look at it.

19 Do you recognize this exhibit?

20 A I do.

21 Q How do you recognize it?

22 A I recognize it by my seals on the exterior with my  
23 signature as well as on seals on bags in the interior of the  
24 packaging.

25 Q What is inside of Government's Exhibit 1?

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White - Direct/Scotti

1 A It is the original packaging of Exhibit 1 as well as a  
2 sample from the original packaging.

3 Q Also, what do you see in there?

4 A I see my seals on my bags that I produced while performing  
5 the analysis on the exhibit.

6 Q When you are talking about the packaging, you are talking  
7 about the cocaine?

8 A Yes.

9 Q You also see some metal in there?

10 A I do. In the original packaging are the rails in which  
11 the cocaine was concealed in when I received it.

12 Q Is the sample as you are looking at it in the same  
13 condition as it was when you last saw it?

14 A It is.

15 Q And how do you know that that sample is the same as it was  
16 after you analyzed Government's Exhibit 1?

17 A Once we seal up the evidence, we place our evidence  
18 stickers on the envelopes and we seal it to insure that there  
19 is nothing that will fall out and the seals are still in tack.

20 Q When did you first open Government's Exhibit 1?

21 A It was April 6th of 2015.

22 Q What condition was the cocaine in when you received it?

23 A It was, the metal rails contained two, each rail, there  
24 were two rails. Each contained two packages of white powder at  
25 the time and it was sealed in this initial evidence envelope.

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White - Direct/Scotti

1 Q Did you later remove the cocaine from the rails?

2 A I did.

3 Q From Government's Exhibit 1?

4 A I did.

5 Q Did you perform a series of analyses on the cocaine or on  
6 the substance that you removed from the rails in Exhibit 1?

7 A I did.

8 MR. SCOTTI: Your Honor, I'd like to show the witness  
9 on his computer screen if I can, just the witness for  
10 identification what is marked for ID as Government's Exhibit 1

11 A.

12 Q Do you recognize this document?

13 A I do.

14 Q When did you prepare it?

15 A It was prepared on the 7th of April 2015.

16 Q What is this document by the way?

17 A This is my laboratory report that I prepare at the end of  
18 the analysis.

19 Q How do you know that this is the report that you prepared?

20 A At the bottom of the report, it is approved by and has my  
21 electronic signature on it.

22 Q Can you just tell the members of the jury what type of  
23 information is found on this report?

24 A Sure. It has my findings. It also has the net weight of  
25 the exhibit, the gross weight of the exhibit, the instrumental

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White - Direct/Scotti

1 techniques that I used as well as the case number on it.

2 MR. SCOTTI: And, your Honor, at this time the  
3 government moves Government's Exhibit 1 A into evidence.

4 THE COURT: In evidence at this time.

5 (So marked in evidence as Government's Exhibit 1 A.)

6 MR. SCOTTI: Can I have it published to the jury?

7 THE COURT: Yes.

8 MR. SCOTTI: I'll come back to it.

9 If I can just approach the witness, I'll have him read  
10 from the exhibit.

11 THE COURT: This is his lab report?

12 MR. SCOTTI: Yes.

13 THE COURT: In evidence.

14 Q Looking at your lab report, does it indicate the net  
15 weight of the substance that you said was obtained from  
16 Government's Exhibit 1?

17 A It does.

18 Q What was the net weight?

19 A It was 360.3 grams.

20 Q And does it also indicate on there what the findings were  
21 with respect to your analysis?

22 A It does.

23 Q What were your findings?

24 A The exhibit contained cocaine hydrochloride.

25 Q I'm now going to show you what is in evidence as

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White - Direct/Scotti

1 Government's Exhibit 2.

2 Do you recognize Government's Exhibit 2?

3 A I do.

4 Q And how -- what do you recognize it as?

5 A I recognize it as Exhibit 2 for the case that I analyzed.

6 Q How do you recognize it?

7 A I recognize it from the seals both on the exterior  
8 packaging as well as the interior packaging as well as the  
9 initial packaging material that was received from the evidence  
10 vault prior to analysis.

11 Q And is the sample in the same condition as it was when you  
12 last saw it?

13 THE COURT: This is Exhibit 2.

14 MR. SCOTTI: Yes.

15 THE COURT: It's in evidence already.

16 MR. SCOTTI: Just for chain of custody, I just wanted  
17 to make sure.

18 THE COURT: Next question.

19 It's in evidence.

20 Q When did you first open that exhibit?

21 A Also on the 6th of April.

22 Q Did you perform a series of analyses on Exhibit 2?

23 A I did.

24 THE COURT: You can tell us what the results of your  
25 analysis are.

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1 Q What were the results of your analysis?

2 A Exhibit 2 also contained cocaine hydrochloride.

3 Q And did you prepare a report for Exhibit 2?

4 A I did.

5 MR. SCOTTI: I'll mark this for identification.

6 THE COURT: That will be 2A.

7 MR. SCOTTI: Yes, your Honor.

8 THE COURT: It's in evidence.

9 (So marked in evidence as Government's Exhibit 2A.)

10 Q 2A in evidence, does that indicate your findings on there?

11 A It does.

12 THE COURT: There is no exception to that. The  
13 government should give me a list of proposed exhibits so that I  
14 can follow along. We can move it along if there are no  
15 objections.

16 Counsel is being extra cautious, which is appropriate.  
17 Without objection, it's in evidence.

18 (So marked in evidence as Government's Exhibit 2A.)

19 Q What was the net weight for Exhibit 2?

20 A It was 241.7 grams.

21 Q What was the combined net weight between -- the total  
22 combined net weight between Exhibit 1 and 2?

23 A I believe it was 602 grams.

24 Q What is that when converted into pounds?

25 A Approximately 1.3 pounds.

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White - Direct/Scotti

1 Q Based on your analyses of the substances contained in  
2 Government's Exhibit 1 and 2, what, if anything, did your  
3 analysis reveal about the purity of the cocaine in Government's  
4 Exhibit 11?

5 A I would say based upon my analysis, it is likely to be  
6 more than 50 percent pure.

7 Q When you say 50 percent pure, can you explain to the jury  
8 what you mean by that?

9 A It's likely to contain more than 50 percent cocaine and  
10 then the rest of the other alkaloids and things that are  
11 contained in the cocaine sample.

12 Q With respect to Government's Exhibit 2, what, if anything,  
13 did your analysis tell you about the purity level of  
14 Government's Exhibit, the cocaine found in Government's  
15 Exhibit 2?

16 A It also likely to be more than 50 percent pure.

17 Q After you completed your testing, what did you do with the  
18 materials that you had tested?

19 A All of the materials that I tested were sealed in two  
20 individual bags and then placed in the original evidence  
21 container that I received them from and they were then returned  
22 to the evidence vault.

23 Q Did you examine Government's Exhibit 1 and Government's  
24 Exhibit 2 separately?

25 A I did.

White - Direct/Scotti

1 Q Did you complete the analysis of one of them before  
2 starting the other?

3 A No.

4 Q After you completed the testing, what did you do with the  
5 drugs?

6 A After completing the testing, they were sealed and  
7 returned to the evidence vault.

8 Q And the bag that you see here today, is it sealed the same  
9 way you left it that day?

10 A Yes, it is.

11 MR. SCOTTI: I have no further questions, your Honor.

12 THE COURT: Any cross-examination?

13 MS. DAVID: Briefly, your Honor.

14 CROSS-EXAMINATION

15 BY MS. DAVID:

16 Q Good afternoon, Mr. White.

17 A Good afternoon.

18 Q You testified that you've been a forensic chemist for  
19 three years?

20 A Yes.

21 Q And you've analyzed over 200 exhibits. Fair to say they  
22 were illegal substances?

23 A To determine if they contained illegal substances or they  
24 did not.

25 Q And you analyzed those substances using some of the

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White - Cross/David

1 methods of testing you testified to on direct, right?

2 A I don't believe I testified to them but yes, I used  
3 instrumental techniques to identify them.

4 Q One of them is mass spectrometry, right?

5 A That is a portion of one of the analyses, yes.

6 Q And another portion of the analysis is infrared  
7 spectroscopy?

8 A Yes.

9 Q You've been trained to administer infrared analysis, is  
10 that right?

11 A Absolutely.

12 Q You said when you received the exhibits in this case, they  
13 were still -- the substances were still contained in the metal  
14 rails?

15 A Yes.

16 Q Inside the metal rails, the substance was wrapped up in  
17 vacuum sealed bags, is that right?

18 A That also contained packing tape, clear packing tape.

19 Q And that was for both sets of rails, right?

20 A Correct.

21 Q So both in Exhibit 1 which came from one set of handrails,  
22 they were vacuum sealed in packing tape, right?

23 A Yes, ma'am.

24 Q And also from Exhibit 2, correct?

25 A Correct.

White - Cross/David

1 MS. DAVID: I have no further questions.

2 THE COURT: Anything further, Mr. Scotti?

3 MR. SCOTTI: No, your Honor.

4 THE COURT: You may step down.

5 Thank you very much.

6 (Witness excused.)

7 THE COURT: Do you have someone else you want to take  
8 before lunchtime?

9 MR. SCOTTI: Yes, your Honor.

10 The government calls Jim Modico from JetBlue Airlines.

11 JAMES MODICO, called as a witness, having been first

12 duly sworn/affirmed, was examined and proceeded

13 to testify as follows:

14 THE CLERK: Please state and spell your name for the  
15 record.

16 THE WITNESS: My name is James Modico, M-O-D-I-C-O.

17 THE COURT: Your witness.

18 MR. SCOTTI: Thank you, your Honor.

19 DIRECT EXAMINATION

20 BY MR. SCOTTI:

21 Q Good afternoon, Mr. Modico.

22 A Good morning -- good afternoon. Sorry.

23 Q What do you work?

24 A I work for JetBlue Airways here in New York.

25 Q And how long have you been with JetBlue Airlines?

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1 A Approximately two and a half years.

2 Q What is your title with the company?

3 A I'm an investigator with JetBlue.

4 Q Do you have any prior law enforcement experience?

5 A Yes, I do.

6 Q What is that?

7 A I was a supervisory special agent with the Department of  
8 Homeland Security.

9 Q And getting back to your role as an investigator with  
10 JetBlue, does JetBlue Airlines keep records with regard to  
11 tickets sold for their flights?

12 A Yes.

13 Q Do you have access to JetBlue Airlines electronic database  
14 and their records?

15 A I do.

16 Q I'm going to show you what has been marked for  
17 identification as Government's Exhibit 12.

18 Do you recognize Government's Exhibit 12?

19 A Yes, I do.

20 Q And it's a two-page -- I'm going to show you both pages.  
21 It's a two-page document.

22 First, the second page and the first page. What do  
23 you recognize Government's Exhibit 12 to be?

24 A It's typically called a PNR which is a passenger name  
25 record maintained in our computer reservation system and it

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1 contains a passenger's itinerary.

2 Q What passenger name is this record for?

3 A Chevelle Nesbeth.

4 Q Are you familiar with how that document is generated,  
5 specifically this document that relates to the passenger  
6 Chevelle Nesbeth?

7 A Yes.

8 Q How is it generated?

9 A It's generated from our computer reservation system. It's  
10 maintained there for approximately 13 months and this is a  
11 printout of certain details relating to that PNR which I  
12 mentioned.

13 Q When is -- the information on these documents, when is it  
14 generated?

15 A It's generated at certain events. It's created when the  
16 passenger travels.

17 Q What sort of information is kept on the document?

18 A It has the passenger's name, it has the flight they took,  
19 it has the amount they paid for the ticket, it has when they  
20 checked in, when they boarded and when the plane left.

21 Q Does it also contain any record with respect to baggage?

22 A Yes.

23 Q And form of payment?

24 A Yes.

25 Q Is this document a record that is ordinarily maintained by

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1 JetBlue Airlines during the course of its business?

2 A It is.

3 Q Is it the regular practice of JetBlue Airlines to record  
4 the travel information contained in that record?

5 A Yes, it is.

6 Q Is the information in the record saved by JetBlue Airlines  
7 at or near the time of the events that are reflected in the  
8 documents that are marked as Government's Exhibit 12?

9 A Yes.

10 MR. SCOTTI: Your Honor, the government moves to admit  
11 Exhibit 12 into evidence and publish it to the jury.

12 THE COURT: No objection, in evidence.

13 Go ahead.

14 (So marked in evidence as Government's Exhibit 12.)

15 Q Mr. Modico, first, what are we looking at right here?

16 A The top part details the information relating to customer  
17 Chevelle Nesbeth. The top line would be -- where it says  
18 number would be her ticket number.

19 Q I'll zoom in a little bit so we can see here.

20 Are you referring to this number right here?

21 A Yes, that's correct.

22 Q That is the ticket number. Obviously, here is the name.  
23 Would you go through it and show us what other information is  
24 contained here?

25 A Sure. Row one, it will have the line code to the right,

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1 B6, which documents JetBlue. It will have the flight number  
2 which is 1679. Next we have depart, which is 22nd of December.  
3 To -- it would be from -- it would be JFK Airport to Montego  
4 Bay, MJB, Montego Bay, Jamaica.

5 Q So that would indicate a flight on December 22, 2014 from  
6 JFK to Montego Bay, Jamaica that the defendant took?

7 A Correct.

8 Q Skip down to line two.

9 What does that indicate?

10 A It says number 7 outbound travel relating to the same  
11 customer. B6 is JetBlue once again. Flight 780 departing on  
12 January 6, 2015 from Montego Bay, Jamaica to JFK Airport,  
13 estimated time of departure is 5:18.

14 Q Move down the document.

15 What, if any, information do you see here with respect  
16 to the price of the ticket and other charges?

17 A So under fare info, it documents different prices for the  
18 total ticket. So the base fare for the ticket would be 558.  
19 There are some fees associated which come out to that amount,  
20 35, \$5.60, 104.71 which represents security fees and taxes.  
21 The total price of the ticket is 703.31.

22 Q And looking below, there is a section; form of payment.  
23 How do those records indicate they were paid for?

24 A This particular travel ticket was paid for in cash which  
25 would be 703.31.

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1 Right below that, it says issued December 22, 2014 at  
2 JFK by JFK 6C3 which identifies the employee that took the cash  
3 from the passenger at JFK.

4 Q Looking at the document, what would that mean about how  
5 this ticket was paid for?

6 A This particular ticket was paid for in cash at JFK Airport  
7 on December 22, 2014.

8 Q The information toward the bottom here, what information  
9 does this reflect?

10 A That documents certain events relating to the itinerary.

11 Q Does the information at the bottom indicate that the  
12 defendant boarded the flight on December 22 to Montego Bay?

13 A If you want to read from the bottom up it shows JFK, the  
14 same employee 6C3, December 22, 2014 at 9:29 central time and  
15 to the right of that is that six letter passenger name record  
16 that I mentioned earlier.

17 Q All I'm really concerned about, I just want to summarize.  
18 Does the record indicate that she left on December 22 from JFK  
19 and went to Montego Bay, Jamaica?

20 A The first portion at the bottom shows that she checked in  
21 9:29 central. The second portion where it says BLIP is where  
22 she boarded the plane at 12:32 central time and then the used  
23 portion in the middle is when the plane actually took off from  
24 Jamaica at 14:02 Central Standard Time.

25 Q Working up, that also indicates the defendant was on the

Modico - Direct/Scotti

1 flight on January 6 from Montego Bay back to JFK, correct?

2 A That's correct.

3 Q Do the records here, looking at the second page of  
4 Exhibit 2, do the records here also indicate baggage records of  
5 checked luggage?

6 A Yes.

7 Q What do the records in Government's Exhibit 12 indicate  
8 with respect to the checked bags, the number of checked bags  
9 the defendant had on her flight down to Montego Bay?

10 A On December 22, 2014, customer Chevelle Nesbeth had three  
11 checked bags according to this record which would be the top  
12 three lines indicated by the bag tag numbers ending in 278, 279  
13 and 280.

14 Q So that reflects that she had three checked bags when she  
15 went down to Jamaica on the 22nd?

16 A Correct.

17 Q How many bags did she check on the way back?

18 A According to this record, she checked one bag on the way  
19 back on January 6, 2015 represented by JFK number ending in  
20 954.

21 MR. SCOTTI: Your Honor, I have no further questions.

22 THE COURT: Any cross-examination?

23 MS. DAVID: No, your Honor.

24 THE COURT: Thank you.

25 You may step down.



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1 (Witness excused.)

2 THE COURT: It's up to you. If you have somebody now  
3 that you want to take before lunch.

4 MR. SCOTTI: Your Honor, this witness might be a  
5 little longer.

6 THE COURT: We can take our lunch break now.

7 So members of the jury, we'll reconvene, let's make it  
8 at 2:00 so you will have about an hour and a half to enjoy  
9 lunch. It's not raining yet.

10 For those who do not know the neighborhood, if you  
11 want, you can walk down to the promenade where you get the best  
12 views of the lower part of New York City right here from  
13 Brooklyn.

14 There is a park area there. You just take any street  
15 Montague or any of the streets that go from the court across  
16 the park and continue for a few blocks until you hit the  
17 promenade if you want to do that. Of course, you don't have to  
18 but for those of you who don't know the neighborhood, you might  
19 enjoy that.

20 Be back at 2:00.

21 (Jury out at 12:35 p.m.)

22 THE COURT: The jury is out of the courtroom.

23 Give me a heads up as to what I might expect now. I  
24 imagine you might get through your case this afternoon but I  
25 might be incorrect in my sense of things.

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1 MR. SCOTTI: We will definitely finish our case this  
2 afternoon.

3 We have one witness, maybe a second witness. We'll  
4 discuss it over lunch.

5 THE COURT: So there is reason to believe, Ms. David,  
6 that the ball may turn to you this afternoon. You should be  
7 prepared for that.

8 I assume you have going to have Miss Nesbeth testify?

9 MS. DAVID: Your Honor, we haven't made that decision  
10 yet but that would be the only witness.

11 THE COURT: So we may have this case concluded today  
12 and I just want to manage it correctly and my sense is probably  
13 we'll have summations tomorrow morning I suspect and then the  
14 charge.

15 So it's a short trial by the nature of it and you  
16 agree that my sense of things is about right?

17 MR. SCOTTI: Yes.

18 MS. DAVID: Yes.

19 THE COURT: See you at 2:00.

20 (Whereupon, there was a luncheon recess.)

21 (Continued on next page.)  
22  
23  
24  
25

USA v. Nesbeth

A F T E R N O O N      S E S S I O N

(In open court.)

THE COURT: All right. Everybody here?

THE CLERK: I think so.

THE COURT: You can bring your next witness in, in the meantime, while we bring the jurors in, so we can have them here.

MR. SCOTTI: Judge, before we call the next witness, we do want to address an issue that's come up.

THE COURT: What's the issue?

MR. SCOTTI: There are -- there is -- the defendant's cell phone was confiscated at the time of her arrest, and there was a search warrant executed on the phone. The phone was dumped of all of its information. It was generated into a large report. It was turned over to defense counsel as part of discovery, and we are seeking to put in some of these messages in through our case agent.

THE COURT: Is the case agent your next witness?

MR. SCOTTI: Well maybe not the next witness, but the witness after. Well, she might be the next witness, depending on the way the court resolves this.

THE COURT: The only reason I'm saying this is because I don't like to keep the jurors waiting. If we don't have to, we can talk about this after your next witness, if that's not relevant here.

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1 MR. SCOTTI: That's fine, your Honor.

2 THE COURT: So you are objecting to allowing these in  
3 evidence?

4 MS. DAVID: Yes, your Honor.

5 THE COURT: Was there any suppression motion that was  
6 made here?

7 MS. DAVID: No, your Honor. The issue is -- well  
8 there are two issues, if the court wants to address them now or  
9 wants to wait.

10 THE COURT: Let's wait until we take our break, and  
11 let's have the next witness in the meantime. So we can bring  
12 the jurors in.

13 MR. SCOTTI: Okay.

14 (Pause.)

15 (Daniel Suden took the witness stand.)

16 (Continued on the next page.)

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## USA v. Nesbeth

1 THE CLERK: All rise.

2 (Jury enters.)

3 THE CLERK: You can all be seated.

4 THE COURT: All right. Folks, we are ready to  
5 continue with the trial. We have somebody now who is going to  
6 be our next witness.

7 Let's see who this gentleman is, Mr. Scotti.

8 MR. SCOTTI: Your Honor, the government calls Special  
9 Agent Dan Suden.

10 THE CLERK: Good afternoon, Agent Suden. I ask you to  
11 remain standing and raise your right hand.

12 DANIEL SUDEN, called as a witness, having been first  
13 duly sworn/affirmed, was examined and proceeded  
14 to testify as follows:

15 THE CLERK: Please state and spell your name.

16 THE WITNESS: My name is Daniel Patrick Suden. My  
17 last name is spelled S-U-D-E-N.

18 THE CLERK: Thank you.

19 THE COURT: Your witness.

20 MR. SCOTTI: Thank you, your Honor.

21 DIRECT EXAMINATION

22 BY MR. SCOTTI:

23 Q Agent Suden, who do you work with?

24 A I'm a special agent with U.S. Immigration and Customs  
25 Enforcement, Homeland Security Investigations.

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Suden - Direct/Scotti

1 Q Your title is special agent; is that correct?

2 A That's correct.

3 Q How long have you been a special agent with HSI?

4 A It will be six years in October.

5 THE COURT: So I have to interrupt you interrupt you  
6 now. I just can't help myself. I just do this all the time.  
7 It's just something I can't resist.

8 Do you know why you are called special agent and not  
9 just plain agent?

10 THE WITNESS: Special is a limiting word that  
11 indicates that our authority is for a special purpose of  
12 federal law. When federal agents began, they didn't want to  
13 create a federal police force with universal authority. They  
14 wanted to have agents that enforce one specific set of rules.

15 THE COURT: Interesting. I heard -- and that may be  
16 so -- that it goes back as far as J. Edgar Hoover. That's a  
17 charming story. Whether it's true or not, I don't know.  
18 That's why I asked you these questions. That he thought all of  
19 his agents were special. Maybe it was sort of related because  
20 he was carving out a certain law enforcement apparatus, and I  
21 think probably it goes back to those days.

22 THE WITNESS: I'm not positive of that history, but I  
23 know agents have been around before the early 1900s.

24 THE COURT: So, you know, the jurors should know that  
25 you are all called special agents, right, DEA agents, FBI

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1 agents?

2 THE WITNESS: It's used interchangeably with our  
3 title, which is 1811. It's a job series within the federal  
4 government for criminal investigators. It's similar to what a  
5 detective in a local police force would do.

6 THE COURT: So I like the jurors to understand that  
7 you are a special agent, and they are probably wondering why  
8 Judge Block is not called special judge.

9 THE WITNESS: There is a joke amongst us, that, oh,  
10 I'm just a regular agent because I work and do all the humdrum  
11 things that we have to do.

12 THE COURT: So, members of the jury, so once in a  
13 while I will ask some questions for clarification purposes.  
14 Sometimes there's a touch of humor to it, but it's not meant to  
15 suggest that this is anything other than serious; but I'm a  
16 great believer that sometimes you can lighten up the courtroom.  
17 And I think that jurors are sometimes entitled to know a little  
18 about things.

19 If I do that, I'm not suggesting that I'm for the  
20 government or against the government. I'm totally neutral, but  
21 it's just being for those special and limited purposes. So  
22 understand that. Go ahead.

23 MR. SCOTTI: Thank you, your Honor.

24 BY MR. SCOTTI:

25 Q Agent Suden, where are currently assigned?

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1 A To the JFK smuggling unit team four.

2 Q And what are your duties and responsibilities there?

3 A There has just been a restructuring about a week ago.

4 Prior to a week ago, our sole function was narcotics  
5 investigations, dealing with narcotics coming through JFK  
6 International Airport. As of a week ago, we are now going to  
7 be doing all sorts of smugglings, including things other than  
8 narcotics.

9 Q Still working in narcotics?

10 A Yeah. That's still our main focus and still the bulk of  
11 our case work.

12 Q How long have you been in that assignment for?

13 A I have only been in New York for about a year this June.  
14 So this month is a year.

15 Q Your entire time in New York you are working on narcotics  
16 investigations?

17 A Correct.

18 Q Where were you working prior to being assigned to  
19 New York?

20 A My first assignment out of the academy was in southern  
21 Arizona, out of the Tucson office, working on the organized  
22 crime drug enforcement task force.

23 Q What, for that particular assignment, including -- with  
24 that assignment, including your assignment here in New York,  
25 how many narcotics investigations would you say you have

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1 investigated?

2 A Where I have been the primary case agent, it hasn't been a  
3 large volume, maybe 25 to 30; but in Arizona my focus was on  
4 large-scale, long-term investigations. Some of the cases would  
5 last several years. You try to identify multiple targets and  
6 take your time building a complex case.

7 Q Did you work in law enforcement before going to HSI?

8 A Yeah. I was probably the third-oldest person in my class.  
9 I was a police officer for nine years in Arizona before I went  
10 to become a federal agent.

11 Q What different job or titles or ranks did have you as a  
12 police officer in Arizona?

13 A I worked for a sheriff's department. So my initial rank  
14 was as a deputy sheriff. It's what you see with a typical  
15 police officer: Answering calls for help, answering 911 calls.  
16 I was assigned to a patrol district for the first three and a  
17 half years as a deputy.

18 After three and a half years I was promoted to  
19 detective; and for two and a half years I worked as a  
20 detective, investigating a variety of crimes, all felonious in  
21 nature.

22 After three -- after two and a half years as a  
23 detective, I was promoted to sergeant; and I spent the last  
24 three years of my career with the sheriff's department as a  
25 patrol sergeant, supervising upwards of 20 deputy sheriffs.

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1 Q In your time as law enforcement in Arizona, what type of  
2 work did you do on narcotics-related cases?

3 A Pima County is in southern Arizona. It shares over a  
4 hundred miles of water with Mexico. There is large expanses of  
5 desert in Pima County. So it's a prime location for narcotics  
6 trafficking.

7 A typical patrol deputy would encounter a lot of  
8 crimes incidental to drug trafficking. Sometimes you will make  
9 a traffic stop and you think you are pulling over somebody for  
10 speeding, and the vehicle turns out to be loaded with drugs.

11 During my course as a deputy I made approximately 300  
12 arrests. Somewhere in the vicinity of 50 to 100 of them were  
13 for street-level narcotics, personal-use quantities of cocaine,  
14 crack cocaine, methamphetamine, heroin, marijuana; and I made  
15 several arrests of street-level dealers, people dealing larger  
16 quantities of narcotics, but not at the level that I  
17 investigated as a special agent.

18 Q So now, getting back to your experience as a special  
19 agent, I believe you testified that you have worked on  
20 approximately 20 to 30 investigations. Is that correct?

21 A That was with me as the primary case agent. As a member  
22 of a team, you assist in all of the investigations that your  
23 team participates in. So I was on a ten-man team in Tucson.  
24 We were also located with four other agencies.

25 The task force that I was on had, I think, 60 or so

Suden - Direct/Scotti

1 federal agents; and I participated in over a hundred  
2 investigations in various capacities.

3 Q How many of those investigations involved importation of  
4 cocaine into the United States?

5 A Almost all of them began at that point. Very few of our  
6 cases in southern Arizona dealt with domestic narcotics  
7 trafficking. Our push was to interrupt international drug  
8 smuggling from Mexico.

9 Q Now, when you got assigned here to the New York office,  
10 how many of your investigations involved the importation of  
11 cocaine?

12 A Almost all of them. Our authority is international in  
13 nature. We deal with things that are smuggled from out  
14 received the U.S. into the U.S. or that impact us in that way.

15 Q Could you tell the jury what format cocaine is generally  
16 sold in?

17 A Cocaine is generally sold in a powder form. It's turned  
18 into a what's known as a salt so that it's ingestible. It's  
19 water soluble. So it can be consumed through inhalation or  
20 through ingestion or injection.

21 Q What type of investigative techniques have you employed in  
22 investigating narcotics cases?

23 A A wide variety of things, from things such as physical  
24 surveillance, where we will attempt to follow suspects around  
25 for days at a time trying to see their routines, who they meet

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1 with.

2 THE COURT: Let me interrupt.

3 Mr. Scotti, get to the heart of it. You have all this  
4 background information. I think he can get right to what you  
5 are calling him for.

6 MR. SCOTTI: Okay.

7 Q As part of your training did you learn about the pricing  
8 of cocaine?

9 A Yes.

10 Q And what, if anything, do you do to remain current on the  
11 topics that we are discussing with respect to pricing and also  
12 distribution of cocaine?

13 A As a member of the narcotics team, we receive periodic  
14 updates, intelligence briefs. In particular, the Drug  
15 Enforcement Administration puts out a biannual report, with a  
16 first half and a second half of a given year, and they will  
17 compile all the information from a variety of intelligence  
18 sources to indicate what the going price is. That information  
19 is taken from interviews with defendants, from listening to  
20 wiretaps, from evidence collected during the course of cases,  
21 money recovered at the scene of drug investigations, and then  
22 also undercover operations.

23 We often have people who are working directly for us,  
24 and we know, because we are actually controlling a drug  
25 transaction, whether we are doing an undercover sale or an

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1 undercover buy.

2 THE COURT: I'm going to intrude now. When I do this  
3 I'm just trying to move this long and get clarification.

4 Obviously, you are here to testify about the value of  
5 the cocaine that was found in this case.

6 THE WITNESS: Yes.

7 THE COURT: You can tell the jury. It's perfectly  
8 okay. Nobody will bite you.

9 THE WITNESS: Okay.

10 MR. SCOTTI: Judge, at this time the government --

11 BY MR. SCOTTI:

12 Q First of all, were you involved in this case at all?

13 A No, I was not.

14 Q Did you conduct any interviews of participants in this  
15 case?

16 A No, I did not.

17 Q Have you had any contact with the defendant?

18 A I'm not even sure who the defendant is.

19 THE COURT: So you are here just to testify as an  
20 expert, so to speak, about the price of the cocaine, correct?

21 THE WITNESS: Correct.

22 THE COURT: Let's get right to it.

23 MR. SCOTTI: Your Honor, the government, moves  
24 pursuant to rule 702, to qualify Special Agent Suden as an  
25 expert in the areas of narcotics pricing and distribution.

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1 THE COURT: Is there any exception to that?

2 MS. DAVID: No objection, your Honor.

3 THE COURT: So he can testify about that. Let's find  
4 out how much this thing is worth.

5 BY MR. SCOTTI:

6 Q In the context of cocaine smuggling and pricing, are you  
7 aware of the concepts of wholesale value and street value?

8 A Correct.

9 Q What is the distinction, if any, between wholesale and  
10 street value?

11 A Wholesale in the drug trade is very similar to what you  
12 hear in typical retail. When you buy wholesale, you are buying  
13 in bulk. You are buying a large quantity, more than a typical  
14 Street user could afford to invest in.

15 Because you are buying in bulk you are going to get a  
16 higher purity level.

17 THE COURT: So you looked at the cocaine here. You  
18 know what was involved in here, right?

19 THE WITNESS: Yes.

20 THE COURT: Nobody is questioning whether you know  
21 about it or not. You can tell us what you assessed the value  
22 to be. There is a wholesale value. There is a retail value, I  
23 guess. Those are the two values, right?

24 THE WITNESS: Yes.

25 THE COURT: Tell the jurors.

Suden - Direct/Scotti

1 THE WITNESS: I was made aware that the price or that  
2 the quantity was 602 grams. A kilogram is 1,000 grams. A  
3 kilogram in the second half of 2014 was between a price window  
4 of \$27,700 and \$47,000. If you take into account that it's  
5 only 600 grams, that price is between 16,000 and I think about  
6 \$600 upwards to I think it was about \$28,000. In that range,  
7 approximately. I don't have the numbers in front of me.

8 THE COURT: Is that the retail or wholesale?

9 THE WITNESS: That's the wholesale value, if it's sold  
10 at that same purity level, if it isn't cut down, if there isn't  
11 any cutting agents added to it and the quantity increased.

12 THE COURT: So there is a question of purity?

13 THE WITNESS: Fifty percent purity is much higher than  
14 you would expect to find on the street. At 50 percent purity  
15 you could expect to cut that, basically add a cutting agent and  
16 increase the volume by twofold, turning 602 grams into  
17 approximately 1204 grams.

18 THE COURT: You are very knowledgeable obviously. So  
19 what was the street level itself worth?

20 THE WITNESS: Grams of cocaine are sold in New York  
21 anywhere between \$40 and \$100. Forty dollars is a very low  
22 outlier, and \$100 is a high outlier. Typically you will see  
23 between \$50 and \$80. Those are the typical prices for a gram  
24 of cocaines.

25 THE COURT: So tell us what the number would be if you

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1 used the lowest number.

2 THE WITNESS: If you used the lowest number or the  
3 lowest typical number of \$50 and you multiplied 602 times 50,  
4 you are looking at a little over \$30,000, I think \$30,200, and  
5 if you take --

6 BY MR. SCOTTI:

7 Q Is that for how many grams, 600 grams?

8 A That's for 600 grams, if it wasn't cut.

9 Q How much if it was cut?

10 A If you cut it and you turn it into 1200 grams, times 50,  
11 you are looking at a little over \$60,000.

12 THE COURT: So we have a range.

13 A (Continuing) On the low end.

14 THE COURT: We have a range for what its value is.  
15 Anything else you wish to ask him?

16 MR. SCOTTI: No, your Honor. No further questions.

17 THE COURT: All right. Do you have questions,  
18 Ms. David?

19 MS. DAVID: Yes, your Honor.

20 THE COURT: All right.

21 CROSS-EXAMINATION

22 BY MS. DAVID:

23 Q Good afternoon, Agent Suden.

24 A Good afternoon, counselor.

25 Q So you testified on direct what exactly would be street

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Suden - Cross/David

1 value of the cocaine found in this case?

2 A It's a window of value, depending on the purity, depending  
3 on your clientele, but generally the numbers that I just  
4 stated.

5 Q And in your experience interacting with cases where people  
6 are bringing drugs into the country, usually when a person  
7 arrives with drugs is there someone there that's picking them  
8 up from the airport?

9 A Generally.

10 Q That's in part because the idea that whoever was sending  
11 the drugs doesn't want those drugs to be lost, correct?

12 A That's one of the many risks that they are trying to  
13 curtail.

14 Q Or that they would be stolen in some way?

15 A Theft, detection, interdiction, those are all fears.

16 MS. DAVID: I have no further questions.

17 THE COURT: I take it you have no other questions,  
18 Mr. Scotti?

19 MR. SCOTTI: No questions, judge.

20 THE COURT: Thank you very much. You may step down.

21 THE WITNESS: Thank you, your Honor.

22 THE COURT: Your next witness, please. Is this the  
23 one you wanted to chat with me about?

24 MR. SCOTTI: Yes, your Honor.

25 THE COURT: All right. So, folks, I'm going to

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1 whisper a little bit at sidebar because counsel said there is a  
2 legal matter they want to discuss with me before the next  
3 witness testifies.

4 I can do one of two things. I can have you sent back  
5 in the jury room or I can have you sit here and guess about  
6 what we are talking about. We are going to try -- I will see  
7 how long it's going to take. It may not be too long. We will  
8 see how it goes.

9 Once again, we are not being snobs, we are not being  
10 rude. We do it intentionally so we can keep the lines clear.  
11 I'm not going to have anything to do when you deliberate about  
12 the facts of this case. You have nothing to do when we talk  
13 about the law, because it can be confusing. It may be, you  
14 know, prejudiced by things we say which you don't really  
15 understand. So we try to do it that way.

16 So let's whisper a little bit here, see how it goes.  
17 If it's going to take a substantial amount of time, then I will  
18 let you leave the courtroom so you can be comfortable. I don't  
19 think it's going to take too long. All right.

20 (Continued on the next page.)  
21  
22  
23  
24  
25

## Sidebar

1 (Sidebar conference.)

2 THE COURT: So let's hear what the concerns are that  
3 we have now.

4 MR. SCOTTI: Your Honor, as I was saying before, there  
5 were messages, there were text messages that were obtained from  
6 the defendant's phone after a search warrant.

7 THE COURT: You want to use those text messages? They  
8 are from her phone. So what's the problem, Ms. David, that you  
9 think is not permissible?

10 MS. DAVID: Yes, your Honor. There are two issues.  
11 One, I think, is more significant than the other; but the first  
12 issue is that the messages that were extracted from the  
13 phone -- it sounds as if the government is seeking or they have  
14 indicated they are seeking to introduce the messages through  
15 the case agent, Agent McFadden, and we have had some  
16 preliminary discussions, myself and Mr. Scotti.

17 THE COURT: What's your objection?

18 MS. DAVID: The authenticity.

19 THE COURT: The authenticity. So how do you expect to  
20 establish a foundation as to the question whether these are  
21 authentic?

22 MR. SCOTTI: As Ms. David was telling the court, we  
23 had some preliminary discussions about agreeing to the  
24 authenticity of the statements here. There were text messages  
25 that were arguably favorable to the defense, and there are

Sidebar

1 messages that were arguably favorable to us. Our discussion  
2 was how we were going to put those in and how we would agree to  
3 the authenticity of them.

4 We did talk last Friday, I believe.

5 THE COURT: I'm trying to get to the heart of it. The  
6 jurors are waiting. I don't care whether you talked Friday,  
7 Thursday, Wednesday, last year.

8 What is it you want to do?

9 MR. SCOTTI: We did agree to stipulate to the  
10 authenticity.

11 THE COURT: You did not agree?

12 MR. SCOTTI: We did agree.

13 THE COURT: You did agree.

14 MR. SCOTTI: That stipulation has not been drafted at  
15 this point.

16 THE COURT: Are you changing your mind?

17 MS. DAVID: It's not that I'm changing my mind. My  
18 understanding from our discussion was we were going to enter  
19 into a stipulation. In fact, we both sought to introduce these  
20 messages, but because neither of us has really finished  
21 discussing the intention on both parts --

22 THE COURT: So the only thing the judge can do is call  
23 a witness to deal with it the good, old-fashioned way.

24 MS. DAVID: The other issue -- I'm sorry -- I can be  
25 brief.

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## Sidebar

1 THE COURT: You can't agree, you can't agree. Let's  
2 call the witness, and I will listen to his testimony.

3 What else?

4 MS. GEDDES: Your Honor, relying upon our  
5 understanding that the defendant was going to stipulate, we  
6 don't have the witness here today.

7 THE COURT: Oh, you don't have a witness today. So  
8 why are we doing this? Do you have somebody else to testify  
9 today?

10 MR. SCOTTI: We have an agent who can testify to the  
11 messages but not to getting the information out of the phone.

12 MR. WEIL: He can read the document aloud. Being that  
13 she didn't create --

14 MR. SCOTTI: She compared it.

15 THE COURT: We have a trial here. What is it you want  
16 me to do?

17 MS. DAVID: The bigger issue that I have with the  
18 messages is that they are all in Patois, your Honor.

19 THE COURT: They are in what?

20 MS. DAVID: They are in Patois, and the issue is based  
21 on the government's representations it seems that they would  
22 also need to call an interpreter to translate.

23 THE COURT: What do you want me to do? You are making  
24 an application. What's your application?

25 MS. DAVID: I would ask that the government not be

Sidebar

1 allowed to interpret the messages.

2 THE COURT: Why don't you take the person into court.  
3 I will listen to it, I will make my ruling as to whether it's  
4 admissible. How does that sound?

5 MR. SCOTTI: That's fine.

6 THE COURT: We can do that outside of the earshot of  
7 the jurors. All right.

8 Let's bring him in right now, and let's take care of  
9 it. Okay.

10 (End of sidebar conference.)

11 (Continued on the next page.)

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1 (In open court.)

2 THE COURT: Members of the jury, what's going to  
3 happen now is I have to listen to some folks talk about some  
4 legal matters, which I don't want you to listen to.

5 So I'm going to have you just cool your heels. I  
6 assume you are wearing heels. Ms. Avila, you are wearing  
7 heels. I saw that outside.

8 Maybe take 10 or 15 minutes or so. These things  
9 happen in the course of the real world. It's not like TV,  
10 right? So we will do that in your absence so we don't have to  
11 whisper to each other while I flush this thing out.

12 After the case is over, if you are curious about  
13 anything that has happened or has not happened, my policy is to  
14 make myself available to you after you render your verdict so  
15 you can say what happened, what was this all about, or any  
16 other questions or anything else you want to say to the judge.  
17 I think it's a good thing to do, so the jurors have an  
18 opportunity to, you know, satisfy whatever curiosities or ask  
19 questions about whatever it is that they want.

20 So you don't want to speculate about things you are  
21 not allowed to do. Then you can talk to me afterwards. Then  
22 you may want to talk about this and you will find out what  
23 happened while I made you wait two minutes, but don't  
24 speculate. All right.

25 THE CLERK: All rise.

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1 (Jury exits.)

2 THE COURT: The jurors are not here.

3 Now, Mr. Scotti, is this your last witness that we are  
4 talking about now, or is there anybody else?

5 MR. SCOTTI: Your Honor, there is also -- we were able  
6 to get a Patois interpreter to resolve any issues of  
7 translation of the messages we seek to admit.

8 THE COURT: So I will ask you the question again: Is  
9 this your last witness?

10 MR. SCOTTI: It's two more witnesses, judge: This  
11 witness, and then an interpreter, if the interpreter is  
12 required -- or, no, there are two witnesses, this witness and  
13 the interpreter.

14 THE COURT: This witness and the interpreter?

15 MR. SCOTTI: Yes.

16 THE COURT: That means these will be your last  
17 witnesses?

18 MR. SCOTTI: Yes.

19 THE COURT: I just want to know.

20 MR. SCOTTI: That's it.

21 THE COURT: So now when you folks talked to me at  
22 sidebar back and forth and tell me about last Friday and last  
23 Thursday, it doesn't move the ball along at all. It's hard to  
24 get a handle on what you are fussing about.

25 The best I can glean from your mumbling is that you

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1 have an insipient agreement on the admissibility of these, I  
2 guess, phone messages and somehow you don't have an agreement.  
3 I'm a little confused as to what went on.

4 The jurors are not here. Why don't you tell me in 25  
5 seconds or less what your problem is.

6 MR. SCOTTI: I will try, judge. We had spoke last  
7 Friday.

8 THE COURT: You mentioned that. I know that.

9 MR. SCOTTI: I'm sorry?

10 THE COURT: You mentioned that. I know that.

11 What's the problem today?

12 MR. SCOTTI: Well, the issue is today that we are now  
13 seeking to put these messages in.

14 THE COURT: I understand.

15 MR. SCOTTI: And we want to put them in through the  
16 agent who did not dump -- didn't actually do the phone dump and  
17 didn't actually extract the information, but that was the issue  
18 that we had agreed the week before would be stipulated to.  
19 Ms. David can speak to obviously her understanding of that  
20 agreement.

21 THE COURT: The stipulation was that this person would  
22 be able to be qualified to lay the foundation that these were  
23 the actual phone messages obtained on the phone?

24 MR. SCOTTI: Exactly.

25 THE COURT: So you play the messages and you have an

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1 interpreter who will then translate them for the jurors.

2 MR. SCOTTI: These were text messages. So we were  
3 stipulating to the authenticity of all of the information that  
4 was taken off the phone, and then it would be case agent  
5 testifying to messages.

6 THE COURT: Why don't you stand by your oral  
7 agreement? You are taking up our time, and I don't quite get  
8 it.

9 MS. DAVID: Sure, your Honor. When we discussed this  
10 information last week, there was no discussion about -- first  
11 of all, there was no discussion about a translator, which is  
12 the biggest problem that I have with the messages because they  
13 are in fact in Patois; and left, I think, for the jury just to  
14 read them, they are not something that the jury can just take  
15 on face value.

16 THE COURT: You knew that before. You knew that these  
17 were not going to be in English, right?

18 MS. DAVID: Yes, your Honor. I think the issue was if  
19 either of us were seeking to actually put these messages before  
20 the jury that either one of us would need to call some type of  
21 translator.

22 THE COURT: We have that person now. So why is it you  
23 are fussing about this?

24 MS. DAVID: I don't know what the translation that the  
25 translator is going to purport that these messages mean. I

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1 don't know if we are going to need more context based on the  
2 messages that were selected by the government.

3 These messages and none of the text messages were  
4 apparent on the exhibit list. This wasn't something that --  
5 obviously, I had the extractions.

6 THE COURT: You are going on and on and on and on.  
7 You told me you had an agreement. Now you tell me you do not  
8 have an agreement.

9 MS. DAVID: I'm not saying I'm telling you now that  
10 I'm changing my mind, your Honor. The issue for me is the  
11 translation --

12 THE COURT: It's hard for me to try to understand  
13 what's in your mind at this time. Maybe you would like to  
14 enlighten me a little more effectively.

15 MS. DAVID: Sure, your Honor. The fact that the  
16 messages are in Patois is a problem for the defense because the  
17 government is seeking to introduce them and call a translator  
18 to interpret them.

19 THE COURT: Wasn't that a problem before you agreed to  
20 the authenticity of these messages?

21 MS. DAVID: Agreeing to the authenticity as in  
22 agreeing to the fact they came from the phone is different than  
23 agreeing to the admissibility.

24 THE COURT: Now you don't want the jurors to hear  
25 them, even though you are agreeing they are authentic. Is that

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1 what you are telling me?

2 MS. DAVID: No, your Honor. If the jury reads the  
3 messages just as they are written, I don't believe they will be  
4 able to interpret the messages, which is why an interpreter is  
5 required. However, I don't know what that interpreter's  
6 interpretation of those messages is going to be, and that was  
7 never discussed.

8 THE COURT: Stop it. You are telling me you don't  
9 want these messages to be in evidence because they are in a  
10 foreign language and you are not so sure you know what they  
11 say. Is that what you are trying to tell me? I'm trying to  
12 decipher what you are trying to say.

13 MS. DAVID: My or -- whatever interpretation that the  
14 government interpreter is going to give, I don't know what that  
15 is, that's correct.

16 THE COURT: You had ample opportunity. You knew this  
17 was going to happen. You said you agreed to the authenticity,  
18 but now you are playing ignorant that you don't want to have  
19 them in evidence when you agreed to the authenticity. I don't  
20 understand what you are saying.

21 MS. DAVID: What I'm saying --

22 THE COURT: So you are not going to say anything any  
23 more now. I gave you the opportunity. It sounds like  
24 gobbledygook to me.

25 You have somebody you want to put on who is going to

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1 be an interpreter, and that person is here. I will let you  
2 question that person as to that person's qualifications. You  
3 can do it here in the absence of the jury or in front of the  
4 jury.

5 What's your preference, Ms. David?

6 MS. DAVID: Absence of the jury, your Honor.

7 MR. SCOTTI: Your Honor, I do want to point out to the  
8 court one thing. Ms. David is -- we did have a discussion  
9 about whether we would be using any of the messages, each of  
10 us. Neither of us gave final answers on it, and Ms. David is  
11 correct in that this exhibit is not part of the exhibit list  
12 that I gave them.

13 This was -- this is an exhibit that they had the  
14 information. They had it as part of discovery. The defendant  
15 herself, these are her own words. It could have been  
16 interpreted by her.

17 But I do want to be clear that this was not part of  
18 the exhibit list. But nevertheless, this was information that  
19 the defendant had, information the defendant could interpret  
20 herself; and this was just now because we were able to secure  
21 an interpreter at this time, at the last minute, that these are  
22 now needs an interpreter.

23 THE COURT: This is my ruling. I'm not going to let  
24 you do it. Your case is over. It just sounds, all this  
25 mumbling back and forth and this and that, it's not on the

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1 exhibit list, it's something that happened lately, she knew  
2 about it, she didn't know about it. It just doesn't sound like  
3 something I can allow in evidence. It just doesn't sound like  
4 it to me.

5 What else do you have?

6 MR. SCOTTI: Your Honor, if I could just have one  
7 moment, please.

8 THE COURT: Yes.

9 (Pause.)

10 MR. SCOTTI: Nothing else, your Honor.

11 THE COURT: All right. So, you know, you have all  
12 your evidence in. You have your drugs. You have everything  
13 else. And I don't know if you need any more. I was willing to  
14 try to accommodate you, but it's just too fuzzy for me to  
15 really get a handle on it. So we are not allowing it. All  
16 right.

17 Now, I think at this particular time we can go forward  
18 with your case. So are you going to have her testify or not?

19 MS. DAVID: I would like to make my rule 29 motion.

20 THE COURT: You can make your rule 29 motion, but why  
21 don't you answer my question.

22 MS. DAVID: The court can inquire directly from  
23 Ms. Nesbeth, but we will not be putting on a case, your Honor.

24 THE COURT: So you understand, Ms. Nesbeth, you  
25 discussed this fully with your counsel and you agree with that?

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1 You are making an informed decision after consulting with your  
2 counsel that you prefer not to testify; am I correct?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Okay. Would you have anybody else that  
5 you would call?

6 MS. DAVID: No, your Honor.

7 THE COURT: Okay. So what I want to do is I have a  
8 draft of the charge, and the only question -- I will give it to  
9 you, but I just have one question here.

10 The way my excellent law clerk drafted it, it would be  
11 to have a separate determination as to whether there was an  
12 importation of drugs and then to the possession with intent to  
13 distribute the drugs, and a separate question as to the drug  
14 type, whether it was cocaine or not. There can't be anything  
15 else. I don't see why you have a separate question here.  
16 There is no separate quantity that we are dealing with here.

17 So my thinking is just to present it as to whether she  
18 knowingly and intentionally imported cocaine, period. Is there  
19 any problem with that? That's what the case is all about.  
20 Okay. So we will do it that way. All right.

21 MR. SCOTTI: Judge, also, in our request to charge, we  
22 also included in that that the defendant intentionally or  
23 consciously avoided knowing.

24 THE COURT: Conscious avoidance?

25 MR. SCOTTI: A conscious avoidance charge, I think, is

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1 appropriate here, judge. The evidence here is that the  
2 defendant didn't know. So the lack of knowledge and all the  
3 surrounding circumstances here would argue that she did know.

4 So if the defense itself is lack of knowledge, then  
5 there is the argument here that she made herself willfully  
6 blind so it would have been obvious.

7 THE COURT: I see your point. I'm not going to give  
8 it. All right.

9 So let's have your summations now. Do you need a  
10 little bit of time to gather your thoughts?

11 MR. SCOTTI: Yes, your Honor.

12 THE COURT: So, Mike, tell the jurors that we will be  
13 with them in about -- what, about ten minutes you will need?

14 MR. SCOTTI: Could we get 15 minutes, judge?

15 THE COURT: Okay. Let's tell the jurors they will be  
16 coming back here at three o'clock promptly to continue with the  
17 trial.

18 Now, do you want to, in the meantime, put anything on  
19 the record on your rule 29 motion, Ms. David?

20 MS. DAVID: Yes, your Honor. We would ask the court  
21 that the court grant our rule 29 motion, even in the light most  
22 favorable to the government. We would argue that the  
23 government has not shown that Ms. Nesbeth knowingly imported  
24 the drugs and possessed them with intent to distribute.

25 THE COURT: All right. So I'm going to deny that.

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1           See you then at three o'clock for summations, and we  
2           will give the case to the jury today. If not, tomorrow  
3           morning. We will see how it goes.

4           MR. WEIL: Your Honor, would we be able to review the  
5           charge in 20 minutes?

6           THE COURT: You have seen it 3,000 times.

7           MR. WEIL: I have never been here before, your Honor.

8           THE COURT: It's going to be count one, whether or not  
9           the defendant knowingly and intentionally imported -- I'm going  
10          to say cocaine. Okay. I'm going to just wrap it together  
11          because there is no other deal in this case.

12          And the first element that the defendant imported  
13          cocaine into the U.S. from a place outside; and the second,  
14          that the defendant is knowingly and intentionally, and then we  
15          can explain what knowledge is. You know all of that, right;  
16          and so count two deals with the same dime mick in terms of  
17          distribution what else do you think.

18          MR. WEIL: I didn't know if -- I don't know the  
19          court's standard charge on reasonable doubt, evidence, lack of  
20          evidence.

21          THE COURT: We will get a copy to you.

22          MR. WEIL: Okay.

23          THE COURT: We are not going to hold up progress.  
24          There is no need to do that.

25          MR. WEIL: All right.

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THE COURT: Okay. Three o'clock.

(Recess.)

o O o

Certified to be a true and accurate transcript.

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1 (In open court.)

2 THE COURT: So Mr. Scotti, I thought about conscious  
3 avoidance but I don't see it as enough of a foundation that you  
4 laid here.

5 I don't recall anything about the circumstances by  
6 which she got the suitcase; was it given to her boyfriend, I  
7 know I have papers in limine but I'm listening to what came out  
8 and all I hear is that the suitcase was opened up, he probed  
9 it, found the cocaine, she was there.

10 I think you need more than that for conscious  
11 avoidance. Suspicious circumstance as to how she got it, who  
12 gave it to her, where she was going with it and everything like  
13 that.

14 So that is my thinking. I just want you to know.  
15 When I make my ruling, it's just not an arbitrary ruling.

16 MR. SCOTTI: Can I be heard briefly on that, judge,  
17 because I do believe that there is evidence that does prove  
18 that this defendant did willfully turn a blind eye to what  
19 would be obvious.

20 THE COURT: You show me.

21 MR. SCOTTI: Judge, you saw video. I'm not going to  
22 play the video now but it's depicted in Government's  
23 Exhibit 20. It's a picture that clearly shows the obvious  
24 difference in the length of the extendable pull handle. And as  
25 the evidence says, the officer testified that the pull handle

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1 came out only four, five inches. That is not a normal bag to  
2 anyone. And that is not just a coincidence that that is where  
3 the cocaine was found. That clearly reflects, and the  
4 defendant in the video as well, judge, from the baggage  
5 carousel, when the jury can reflect on it, they will be able to  
6 see that when she pulled the bag off of the baggage carousel  
7 and she pulled the handle up, it came up about four or  
8 5 inches, there was not a reaction from her. She didn't pull  
9 on it, look confused by it. She just kicked it out with her  
10 foot so she could use it comfortably. That bag would not be  
11 normal to anybody except someone that knew that there was  
12 cocaine in there, someone who was ignoring.

13 THE COURT: Maybe you are right. It's a bit of a  
14 stretch but it's not exactly a black and white conscious  
15 avoidance dynamic, but maybe I'll give it to you.

16 MS. DAVID: Your Honor, if I may be heard.

17 In response to the government's argument, the  
18 government is essentially saying that the fact that the one bag  
19 only extended partially --

20 THE COURT: Right.

21 MS. DAVID: The evidence shows that there is drugs in  
22 both bags. I guess I'm left with this --

23 THE COURT: One bag was okay, the other was not,  
24 right?

25 MS. DAVID: Right. And the truth of the matter is

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1 that there is the issue that drugs were contained in both bags'  
2 handrails. So I don't think the fact that one of the bags  
3 partially extends really shows anything more than that there  
4 might have been a problem with the bag.

5 THE COURT: This is the real world. My interns are  
6 fascinated by this.

7 So if it's a close call, I'm going to sort of tip the  
8 hat towards the defendant and not give it but it's close.

9 MR. SCOTTI: Judge, if I can respond to that because I  
10 don't think it's a close call.

11 THE COURT: You can certainly argue it. I'm not going  
12 to prevent you from arguing that she had knowledge. You can do  
13 all of that. We are just talking about the charge as such.  
14 And certainly you can argue all of that to the jury.

15 I'm going to stick to my guns. It's a close call but  
16 I adopt concepts of levity when I'm dealing with people's  
17 liberty quite candidly. Some other judges might do it the  
18 other way but that's the way I do it so I'm not going to allow  
19 it.

20 You could have done more things, you could have asked  
21 the agent did you have a conversation about what you thought  
22 she would be doing with the suitcase. The agent could have  
23 said no. You could have asked the agent did she say anything  
24 about where she was bringing the suitcase.

25 I'm not going to be critical. It is what it is.

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1 Let's just bring the jurors in. And the charge has  
2 been revised according what I explained to you. Let's hear the  
3 summations today. I don't know how long we are going to go.  
4 My sense is that I'll charge the jury first thing tomorrow  
5 morning. You'll have a chance to look at it if you really have  
6 concerns about what the charge says.

7 How long are you going to be, about 20 minutes, half  
8 an hour?

9 MR. SCOTTI: My summation, judge?

10 THE COURT: Yes.

11 MR. SCOTTI: Your Honor --

12 THE COURT: I'm not pinning you down.

13 MR. SCOTTI: It will be about a half hour probably.

14 THE COURT: You will be about how long?

15 MS. DAVID: About 25 minutes.

16 THE COURT: I think the way it breaks out, we'll  
17 charge the jury tomorrow morning.

18 So take all the time you need to get your summations  
19 in this afternoon.

20 MR. SCOTTI: Thank you, your Honor.

21 THE COURT: And you'll have a brief rebuttal.

22 MR. SCOTTI: I can't promise it's brief but there will  
23 be a rebuttal.

24 THE COURT: All rebuttals by definition are brief.

25 MR. SCOTTI: I'll try my best, your Honor.

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1 THE COURT: So let's bring the jurors in.

2 (Jury in at 3:25 p.m.)

3 THE COURT: Members of the jury, you are probably  
4 wondering what was going on over the last half hour, 45  
5 minutes. You can speculate but I suspect your speculations may  
6 be incorrect. You might say maybe the judge went out to play  
7 golf for the last half an hour or something like that but that  
8 is not what happened.

9 What happened over the last half hour is that the  
10 government has rested, has no additional evidence to submit to  
11 you.

12 And I guess you did that officially in front of the  
13 jury, right?

14 MR. SCOTTI: I don't think I did, your Honor.

15 THE COURT: You have done it now.

16 MR. SCOTTI: I'm doing it now. The government rests.

17 THE COURT: Then we had some legal matters to discuss  
18 because of that and then I turned the courtroom over to Ms.  
19 David and the defense and she has told me that the defendant is  
20 not going to produce any evidence and the defendant has chosen  
21 to exercise her constitutional right not to testify.

22 So all that took a little bit of time to sort out and  
23 that means that we can spend the rest of the afternoon  
24 listening to summations.

25 It's a short trial but as I cautioned you to begin

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1 with, some trials by their very nature, like O.J. Simpson with  
2 lots of witnesses took months, others take days. It depends on  
3 the circumstances of each case. They are all equally  
4 important.

5 The fact that a case may be a short case or a long  
6 case is not a factor in terms of your determination based upon  
7 the evidence that you heard as to whether the government has  
8 proven its case.

9 So I just want to caution you not to infer anything  
10 one way or the other because of the length of the trial or the  
11 lack of length you might say, but we are now prepared to go  
12 forward with concluding remarks or sometimes we call them  
13 summations.

14 And the same as the opening comments, the government  
15 goes first followed by defense and then the government has the  
16 right to have the last word. We call it a brief rebuttal.  
17 It's not a repeat of the government's summation but somebody  
18 has to get the last word in.

19 Since the government has the burden of proof in all  
20 cases, we give the government the opportunity to get the last  
21 word in.

22 So that's how it shakes out. I think we can do that  
23 all this afternoon speaking to counsel in terms of the  
24 anticipated length of their summations. We'll see how it goes.  
25 And if that materializes, we will then start tomorrow morning

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1 at 10:00 and I'll explain to you the law and you'll commence  
2 your deliberations.

3 I want to caution you once more that what counsel says  
4 in their opening statements or here now in summations is not  
5 evidence.

6 I don't like to have counsel interrupted during their  
7 closing remarks but sometimes it happens when something is said  
8 by a lawyer and the other lawyer says that's just not true.  
9 That is not what I recall.

10 So by talking to them briefly in advance, perhaps it  
11 might be prophylactic to prevent any interruptions, saying I  
12 object, that's not true, because I'm telling you now, it  
13 doesn't matter what the lawyers say. You may agree, you may  
14 disagree. It's your recollection as the fact finders that  
15 counts. The same thing about comments they may make about the  
16 law. It's what I say about the law that counts.

17 And if somebody says something that the other lawyer  
18 doesn't agree with, it's not going to be necessary for them to  
19 stand up and say I object necessarily because I'm telling you  
20 right now that you don't believe anything that is said because  
21 a lawyer said it, whether it's the government lawyer or the  
22 defendant's lawyer. It's your recollection of the facts. And  
23 once again, if you don't have a clear recollection, we can get  
24 the original. Allan, our wonderful court reporter is writing  
25 down everything that we say now and you'll be able to have that

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1 again if you have any question as to what actually was said by  
2 any of the witnesses in the case.

3 So I think with those instructions, we can now call  
4 upon Mr. Scotti to deliver the government's summation.

5 MR. SCOTTI: Thank you, your Honor.

6 Ladies and gentlemen, as I told you when this case  
7 started, the government would prove beyond a reasonable doubt  
8 that the defendant Chevelle Nesbeth brought cocaine into the  
9 United States and that that cocaine was of such an amount that  
10 was not intended for personal use but for distribution and also  
11 that she knew what she was doing when she came into the  
12 country.

13 That is exactly what we have proven to you at this  
14 point. They were her bags. There was cocaine found in those  
15 bags that were valued between either 16,000 at the low end  
16 wholesale to \$60,000 for resale value and she brought those  
17 bags into this country and she was caught.

18 Ladies and gentlemen, most of the evidence you've  
19 heard in this case is not in dispute. It's not in dispute that  
20 the bags where the cocaine was found were the defendant's.  
21 It's not in dispute how she got to this country.

22 You saw in Government's Exhibit 13 her boarding pass  
23 from the flight from Montego Bay, Jamaica into John F. Kennedy  
24 Airport. You know she was admitted into the U.S. because of  
25 the customs declaration, Government's Exhibit 9. It has a

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## Summation - Scotti

1 stamp that says that she was admitted.

2 There is no issue that these bags were hers. This was  
3 the large suitcase. This is the one where there was 371 grams,  
4 I believe it was 371 grams from what I remember, of cocaine  
5 found inside this bag.

6 This bag doesn't just have a baggage sticker with the  
7 defendant's name on it. It has a personal tag that she wrote  
8 that is in handwriting, her name, her address, her phone number  
9 and her E-mail address.

10 These are all things that any of us do to our bags  
11 when we own them, when we want to make sure when we fly that we  
12 get them back. The defendant treated these bags, as the  
13 evidence proved to you, just as if they were her bags because  
14 the evidence showed to you that they were. It's not in  
15 dispute.

16 What else is not in dispute?

17 The rails of both of those bags, both of the  
18 defendant's bags were filled with cocaine. 1.3 pounds of  
19 cocaine is a very significant amount. And they were put into  
20 the rails of the two suitcases that the defendant brought into  
21 this country.

22 There is no dispute that the white powdery substance  
23 found in those rails was cocaine. You heard the testimony from  
24 the forensic chemist and he told you exactly what it was. And  
25 also, you heard testimony from an expert on the value, on the

## Summation - Scotti

1 distribution of cocaine. And there has been no real dispute as  
2 to what that evidence is either. And that evidence is that as  
3 is, wholesale, the cocaine the defendant brought that was a  
4 combined 600 grams or 602 grams was worth between 16,000 and  
5 \$28,000. Agent Suden said that that could be cut up because  
6 the purity level was approximately 50 percent, that that  
7 600 grams could be turned into 1200 grams to be sold out on the  
8 street. And once it was, the value goes from between 30 to  
9 upwards of \$60,000. That's how much those bags were worth when  
10 the defendant came into the country on January 6, 2015, the  
11 bags with her names on them, the bags that you saw her on those  
12 videos come in with.

13 So what are we left with, ladies and gentlemen? We're  
14 only left with one issue here for you to decide. Did she know?

15 Ladies and gentlemen, the evidence here proves to you  
16 that she knew in several important ways. Again, what is the  
17 first and most logical and important reason that you know that  
18 the defendant knew?

19 They are her bags. Her name was on those bags. Her  
20 clothes, all of her belongings were in those bags. In her own  
21 words. One of the first things she did when the CBP officer  
22 brought her to the secondary checking area, he asked her are  
23 these your bags? She said yes. Is everything inside of them  
24 yours? Yes. Did you pack them yourself? Yes.

25 She accepted ownership of those bags because the

## Summation - Scotti

1 evidence proves that they were?

2 Ladies and gentlemen, the next point that shows after  
3 the evidence proves that they were her bags, the next and most  
4 important part of the evidence you heard that shows her  
5 knowledge was the condition of the bag.

6 Can I have the Elmo?

7 THE CLERK: Yes.

8 MR. SCOTTI: You remember Government's Exhibit 20.  
9 This was from the still video taken from the baggage area. You  
10 heard the testimony about the extendable pull handle that  
11 barely came out.

12 Ladies and gentlemen, this case is about common sense.  
13 You have to figure out what someone knew. You have to get  
14 inside their minds. So you want to put yourself in that  
15 situation.

16 These were your bags. Does that handle look normal to  
17 you on the larger suitcase?

18 Does that look like the way it was supposed to? You  
19 can see the smaller bag and the smaller bag fully extends. The  
20 larger bag doesn't.

21 Why does the larger bag not fully extend? Because it  
22 was altered. It was specially altered to fit more cocaine in  
23 there.

24 And how do you know that? You know that because when  
25 the bags were taken apart, you saw the rails. The larger

## Summation - Scotti

1 suitcase had only these two rails. The smaller suitcase had  
2 almost twice as many rails. That's why the smaller suitcase  
3 extended all the way and the larger suitcase didn't. It was  
4 because the larger suitcase was altered.

5 So the question is why wasn't the small suitcase  
6 altered? The larger one was to fit more cocaine. Why was the  
7 smaller one not altered?

8 Ladies and gentlemen, again if you look at this  
9 picture, you'll see the larger suitcase is tall. And it's  
10 already awkward to carry the larger suitcase when the handrail  
11 barely comes up. The smaller suitcase, if the handrail only  
12 came up 4 inches, it would be awkward to carry. It would be  
13 obvious. So the cocaine was put in the top of the rail.

14 But for someone who didn't know, who was arguing that  
15 they didn't know, there is no way that that larger suitcase is  
16 okay, that it's normal. It was normal to the defendant because  
17 she knew what was in it. She knew she was carrying cocaine.

18 (Continued on next page.)  
19  
20  
21  
22  
23  
24  
25

## Summation - Scotti

1 (In open court.)

2 MR. SCOTTI: Also, ladies and gentlemen, you know that  
3 the defendant had knowledge because of how it was hidden.

4 This wasn't just slipped into the pocket of the bag.  
5 These were in the handrails. That is a labor-intensive  
6 process, right?

7 You heard evidence that she went home and she stayed  
8 with her family for two weeks. These were her suitcases.

9 How did that happen? How could somebody get to her  
10 bags and fill them with cocaine in the rails? You know that  
11 that couldn't happen. It's just the defendant would have to be  
12 the most unlucky person in the world, if someone could get to  
13 her bags, take the rails apart, fill them up with cocaine, put  
14 them back together, without her knowing, and then the handrail  
15 of this one, barely extends? That's not -- we already talked  
16 about how that's not normal.

17 After they doctored her bags and altered them,  
18 wouldn't she have realized? Wouldn't she have seen that was a  
19 problem? No reaction from her in that airport. No problem  
20 with extending the rail or pulling on them or doing any of the  
21 things that someone who identified fact that their own bag was  
22 not working properly would do, would pull on it, would question  
23 it. There was no question from her.

24 Also, ladies and gentlemen, getting back to the value,  
25 you have heard \$16,000 or \$60,000. Either way, that is a lot

## Summation - Scotti

1 of money. If she didn't know those drugs were in her bag, how  
2 was whoever snuck it in there going to get it back from her?  
3 Nobody is just giving that to someone who doesn't know and then  
4 crossing their fingers and saying, I hope this gets over there.  
5 Then what? Then what do you do? Were they going to steal them  
6 from her? Were they going to mug her? How were they going to  
7 get the bags back? That's a lot of money.

8 They would not do that. They wouldn't just give bags  
9 to someone who didn't know. That's too much money. There was  
10 just too much on the line.

11 Ladies and gentlemen, the evidence here establishes  
12 without dispute that the bags you are looking at here were the  
13 defendant's. It establishes the fact that there was 1.3 pounds  
14 of cocaine in those bags when she came back. And the evidence  
15 finally establishes without any reasonable doubt that she knew  
16 it.

17 Those bags could not have been taken from her, taken  
18 apart, have cocaine put inside, put back together, with the  
19 larger suitcase and the extendible rail clearly, clearly  
20 altered, and the defendant just think it was fine and come in  
21 here, coming here and be none the wiser.

22 Ladies and gentlemen, the defendant brought \$60,000 of  
23 cocaine into this country. She knew it. The evidence proves  
24 it. I ask that you find her guilty.

25 THE COURT: All right. Thank you, Mr. Scotti.

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## Summation - David

1 Ms. David, summation.

2 MS. DAVID: I agree with Mr. Scotti about one thing.

3 Knowledge is absolutely the key issue in this case. It's what  
4 I said to you in the beginning when I first spoke with you. It  
5 is the only thing that's really in dispute.

6 From the government's perspective they tell you, well,  
7 of course, Ms. Nesbeth, Chevelle, knew because she had the bags  
8 that day, because she said she packed the bags that day. Oh,  
9 by the way, there is this issue with the handrails on one of  
10 the bags not fully extending. Of course we know that there  
11 were drugs found in both of the bags and one handrail had no  
12 problem whatsoever.

13 But, I think that these statements, ladies and  
14 gentlemen, create more questions than answers. Let's talk  
15 about a few of those questions, because as I told you in the  
16 beginning, having the bag in and of itself, having these  
17 suitcases, is not where the story ends. The question is, of  
18 course, that of knowledge.

19 Where is the evidence? Where is the evidence that  
20 Chevelle saw the drugs being placed into the handrails of her  
21 bags; that she was told about it; that she was cued in about  
22 it; that it was even hinted to her? Where is the evidence of  
23 how long she even had these bags before she got to JFK that  
24 day?

25 You heard the testimony from the JetBlue agent, who

## Summation - David

1 told you that on the way to Montego Bay Chevelle checked in  
2 three bags; on the way back she checked in one. She was gone  
3 for approximately two, two and a half weeks. We have no idea  
4 how long she had those bags.

5 Then the malfunctioning handrails. You might have  
6 seen us with these carts in the back of the courtroom that we  
7 use to kind of push around the materials that we bring back and  
8 forth. I remember having a cart once where the wheel was  
9 stuck. Did I think to myself somebody altered this? Somebody  
10 must have put something in there to get it to stick? Or was it  
11 just that it was malfunctioning?

12 Why does the fact that her handrails don't pull out  
13 all the way show flashing signs that there must be drugs in  
14 here and that she must have known that there were drugs in  
15 there? It doesn't.

16 Ladies and gentlemen, you have to ask yourselves  
17 whether or not the government has actually proven that Chevelle  
18 knew that there were drugs in the handrails of those suitcases  
19 beyond a reasonable doubt. I submit to you they have not.

20 I want to talk to you briefly, before I go into the  
21 number of reasons to doubt that are present in this case, about  
22 three principles of law that the judge has talked to you about  
23 and will talk to you about again. The first is the presumption  
24 of innocence. What the presumption of innocence means is that  
25 when Chevelle walked into the courtroom yesterday and today she

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## Summation - David

1 was innocent, and she remains that way up until the time that  
2 you decide otherwise.

3 And the presumption of innocence goes hand in hand  
4 with another very important principle of law, and that is the  
5 burden of proof. It is the government's burden to prove that  
6 Chevelle is guilty. So if you have any questions, any reasons  
7 to doubt her guilt, you look to the government. If you have  
8 questions about why there is no evidence of any link showing  
9 that she, Chevelle Nesbeth, would have had any contact with  
10 cocaine, you look to the government. If you have any questions  
11 about why in this gotcha moment, supposedly, when the agent  
12 looks into the bag and looks at the handrails Chevelle does not  
13 at all appear nervous and nothing really more than confused,  
14 you look to the government.

15 How much proof does the government need? Proof beyond  
16 a reasonable doubt. Proof beyond a reasonable doubt is the  
17 kind of doubt that might cause one to hesitate in the graver  
18 and more serious decisions in life. Ladies and gentlemen,  
19 there are many reasons to doubt in this case.

20 The government doesn't have to give you every piece of  
21 evidence. But you should not have to speculate and guess at  
22 and estimate what's happening. You shouldn't have to speculate  
23 about all of these questions that remain outstanding.

24 On the back of that customs card or the customs  
25 receipt, Government's Exhibit 9 -- you will have it in evidence

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## Summation - David

1 with you -- the CBP officer, the customs officer, said that he  
2 had his own notes back here with names of different officers  
3 and times. This shows you a little bit about how after  
4 Chevelle was arrested the timeline and a little bit about what  
5 was going on.

6 During none of this time, during none of this time at  
7 all, when Chevelle is with these agents, with these law  
8 enforcement folks, is she making any more statements that the  
9 government has shown you that show that she has some direct  
10 link to this cocaine. The only link that they are saying that  
11 she has was the fact that that day she came to the airport with  
12 two bags and that she said that the things that she had  
13 touched, seen, and packed were in fact hers. But you know that  
14 the drugs were not found in places where she would have  
15 touched, seen, or packed. They are found in the handrails,  
16 secreted away from her view, as well as anyone else's.

17 Now, think about all the things that are missing here.  
18 Special Agent Suden testified about some of the types of  
19 investigation he has done in his experience as a drug expert in  
20 doing narcotics investigations, how sometimes law enforcement  
21 does wiretaps, they do work with informants. So they tap  
22 people's phones. They do all of this investigation, they kind  
23 of figure out where the drugs came from, where they are going.  
24 He talked about the fact when people usually come into the  
25 country with drugs there is somebody at the airport waiting for

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## Summation - David

1     them to pick up the bag, for various different reasons,  
2     including the fact that thousands of dollars worth of drugs,  
3     that's something that somebody else would want to pick up.

4             But there is no evidence of any bigger picture here  
5     because Chevelle is not linked to some bigger picture because  
6     she doesn't know. She absolutely doesn't know. This  
7     19-year-old girl comes into the country with these bags after  
8     going to visit her family. Where is the bigger conspiracy?  
9     Where is the evidence that she was part of some plan to bring  
10    drugs into the country? There isn't one.

11            Now, there is a lot of different reasons why the  
12    handrails themselves are not the starting and stopping point in  
13    this case. Because what about the handrails apart from the  
14    fact that they don't -- one of the bags doesn't extend all the  
15    way is an indicator of anything?

16            You heard the testimony that the drugs were in  
17    vacuum-sealed bags. There was no smell coming out of the  
18    handrails. The handrails didn't look to be altered in any way.  
19    There was no hole in the handrails. That in order to get to  
20    the drugs, the customs agent, who testified that of the  
21    thousands of suitcases he searched this is the second time he  
22    has ever found drugs in handrails, that he had to use a probing  
23    agent, this metal instrument, to bang and tap until he could  
24    break open and puncture holes to see any white powder  
25    whatsoever.

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## Summation - David

1 Now, unlike some of the other types of ways that  
2 people bring drugs into the country, as Special Agent Suden  
3 told you, here is an instance where the person who has the  
4 drugs in their bag has zero contact with them. Zero access to  
5 those drugs.

6 It's not an -- it's not a situation where a person has  
7 swallowed them, where they would have been able to access them  
8 into some type of hidden compartment or false bottom. The only  
9 way for the customs agent to have accessed them was to have  
10 broken open the handrails. That's not something that Chevelle  
11 or you or I or anyone would think to do. She did not know.

12 What's the other indication that shows you that the  
13 government can't prove and has not proven that she knew? Think  
14 about Chevelle's reaction when the drugs are discovered or even  
15 during the secondary inspection. Now, the government wants you  
16 to believe that Chevelle has full well knowledge that there is  
17 cocaine in the handrails of these bags. Yet, she talks to the  
18 customs agent. They have a chat, a friendly conversation.

19 You will hear in Government's Exhibit 17A, when he  
20 asks her questions about where she lives, about where she is  
21 going, about if she works, what her dad does, and she is trying  
22 to explain to the customs agent what her father does for a  
23 living. And then he suddenly starts tapping the bag; and  
24 that's when she says, well, is something wrong? But before  
25 that he has already unzipped the lining of the bag, gotten to

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## Summation - David

1 the handrails. This should be the moment where the panic sets  
2 in. The panic should be setting into Chevelle's face, if she  
3 knows there are drugs in there, because it's clear. It would  
4 be clear in the mind of someone who knew that they were about  
5 to be discovered.

6 But none of that, none of that is on her face. None  
7 of that governs any of her body at all. She stands there,  
8 calm, not looking nervous, and only starts to become confused.  
9 Then, even after, even after he bangs on the bag, he tells her  
10 to repack the bag, which she does, even after all of that, when  
11 the bags are taken down and she is waiting to see what's going  
12 on, at this point you would think she must know that she has  
13 been discovered. Because why else is she still standing there  
14 after this man has looked at the handrails so carefully, after  
15 he has pounded the place where the drugs are? If she even, if  
16 she knew they were there.

17 Let's look at the clip of her after all of this is  
18 happening. One moment.

19 (Recording played.)

20 MS. DAVID: So here Chevelle is. She is -- he has  
21 already gone through her bags. If you go back a little bit  
22 further, to about 6:16, she starts reaching into her purse for  
23 something. At this point if she knew that there were drugs in  
24 the handrails, she knew that obviously the customs agent had  
25 been that close to these thousands of dollars worth of drugs

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## Summation - David

1 that she, according to the government, is knowingly trying to  
2 bring into the country, and she reaches into her bag, wouldn't  
3 you expect her to be pulling out, say, her phone to text  
4 message someone, to frantically send a message saying, hey, I  
5 have been discovered; hey, I need help, whoever is supposed to  
6 be coming to pick up the drugs, alerting them.

7 But Chevelle doesn't do any of that. Again, she is  
8 just standing there. She pulls out some lip gloss because she  
9 has no clue. She has no clue what's going on. At this point  
10 she still has no idea. Because she never knew that the drugs  
11 were in the handrails. It isn't until she is placed under  
12 arrest that that becomes clear.

13 Now, at the beginning of this case I told you that  
14 Chevelle had gone on a vacation. She arrived back at JFK and  
15 that ever since she has been in an ongoing nightmare. Because  
16 here she sits, being accused of a crime that she did not  
17 commit.

18 Ladies and gentlemen, I have talked to you about a  
19 number of questions, a number of reasons to doubt that the  
20 government has proven their case beyond a reasonable doubt.  
21 They haven't.

22 I now ask that you come back with the only verdict  
23 that matches up with all of those reasons to doubt in this  
24 case, and that is a verdict of not guilty of all counts on  
25 behalf of Ms. Chevelle Nesbeth.

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Rebuttal - Scotti

1 THE COURT: Thank you, Ms. David.

2 Mr. Scotti, do you wish to have a brief rebuttal?

3 MR. SCOTTI: I do, your Honor.

4 Your Honor, if I could just have a moment, I would  
5 like to set up the video.

6 THE COURT: Go ahead.

7 (Pause.)

8 MR. SCOTTI: Thank you, your Honor.

9 Ladies and gentlemen, this case is about common sense.  
10 It's not about speculation. There is no jury school. None of  
11 you had to take a course before you came here to sit on a jury.  
12 The reason is, the only thing you need to be good jurors, you  
13 walked in here and it was with you today. It's your common  
14 sense and your life experience.

15 Ladies and gentlemen, remember about Officer  
16 D'Andrea's answer on redirect examination. We were talking  
17 about his training and all these things, but he told you that  
18 had nothing do with how he noticed that this handle was odd,  
19 that there was something strange about it. It was obvious to  
20 him. The handle was altered.

21 Let's talk about the defendant's reaction. Someone  
22 who knew they were importing cocaine into the United States  
23 knows that there is a good chance that they are going to be  
24 checked, that they are going to be searched. They will be  
25 prepared for that. They will be ready to be able to mask it,

## Rebuttal - Scotti

1 to hide whatever emotions there are, that they have to look  
2 normal and appear normal to get away with it. So is there any  
3 surprise that for the large part of that video defendant was  
4 just having normal conversation and everything was fine? No.  
5 Because someone who was trying to sneak cocaine into the  
6 country is going to try to act normal. They are going to try  
7 to deflect any suspicion.

8 But, if you look at the video, you will see that there  
9 is a lot of back and forth, normal conversation between Officer  
10 D'Andrea and the defendant. But when does that conversation  
11 stop? It stops the moment he pounds into that rail. There is  
12 not another word said between them until later on, when he is  
13 searching the second bag, but she doesn't say anything.

14 Ladies and gentlemen, look at these bags. They are in  
15 good condition. They pretty much look new. Right? We have  
16 all -- I can't say all of us, but if you travel you have had  
17 your bags searched. For those of us who have been there --  
18 and, again, it's about putting yourself in a situation, you  
19 have had your bags searched, just imagine that that's you. You  
20 are sitting there. You watch the officer going through it.  
21 They empty all out your belongings, they unzip it. That seems  
22 normal. She asks him, Is everything okay? That's her starting  
23 to get nervous. She was talking casually to him. They were  
24 having conversations about her father, about all these other  
25 things. She is trying to deflect his attention, but now he is

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1 getting close.

2 When he hits into that rail, silence. I want you to  
3 take a look at what I'm referring to. You can see they are  
4 talking back and forth. He is working on the rail. Her hands  
5 are at her side. Now he is looking closer. She is looking as  
6 well. She asks if something is wrong. He says no. She is  
7 just looking.

8 (Recording played.)

9 MR. SCOTTI: Ladies and gentlemen, if this was your  
10 bag, if this was you, if you had these nice, new, perfect bags,  
11 pristine bags, what would you say when an officer just took a  
12 metal tool and punched a hole into it? You would say, What are  
13 you doing? Why did you just do that? He was clearly damaging  
14 the bag. He wasn't tapping it anymore. He punched a hole in  
15 it. Is that reaction normal to you?

16 I mean, the defense wants to say that just because she  
17 didn't crumble into a ball and start sobbing at that moment  
18 because it was discovered, that that shows that she had no  
19 idea. That's absolutely not the case. Why? Because Officer  
20 D'Andrea didn't want to alert her to the fact he found  
21 something. You see his reaction. It was hardly any reaction.  
22 He just looked up.

23 But watch what's happening right now. Her hands were  
24 never in her pocket the whole time. It's subtle things, ladies  
25 and gentlemen, but when you add them all up they mean that she

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1 knew. Not saying anything, talking to him casually, trying to  
2 distract him, as soon as he punches a hole, all of a sudden she  
3 is quiet, doesn't even question him. Just punched a hole in  
4 the bag, doesn't question it, nice new bag. Then, for the  
5 first time, he looks around, he sees it.

6 (Recording played.)

7 MR. SCOTTI: Hands go in the pocket. Not a word.

8 Also, ladies and gentlemen, I want to jump ahead to  
9 the -- Ms. David mentioned the lip gloss. I want to play the  
10 whole clip because I want you to see how much lip gloss the  
11 defendant put on her lips, and this is the point where now the  
12 bags have been searched and she is still there and there are  
13 more officers coming her way. If Ms. David wants to argue this  
14 shows she doesn't know, she was casually putting lip gloss on,  
15 reaches into her bag.

16 (Recording played.)

17 MR. SCOTTI: Still going, still going, and now still  
18 rubbing on the area. Ladies and gentlemen, that doesn't look  
19 casual. This is someone who is in a very stressful environment  
20 and was trying to act casual. She put lip gloss on for -- you  
21 have the video in evidence -- it looked like ten seconds  
22 almost. How chapped were her lips? And then afterwards she  
23 rubs it on.

24 For someone who knew that cocaine was in the bag that  
25 she was carrying and it was just searched like that, that's

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1 consistent with someone -- it's a nervous tick. They are not  
2 going to crumble into a ball. They are not going to start  
3 crying, but it's little things that show. When you combine  
4 that are the big things that we have here, that it's her bags,  
5 that's not in dispute, these reactions are significant. They  
6 are very significant.

7 Ladies and gentlemen, common sense. Drug traffickers  
8 do not give \$16,000 to \$60,000 worth of drugs to someone who  
9 does not know they are carrying it. They just don't. They are  
10 not going to risk it, especially when the large suitcase was  
11 altered like that. Think about that.

12 Are they going to do something and put the drugs in a  
13 place where that bag is altered and then give it to someone who  
14 doesn't know so that their attention would be directed exactly  
15 to that spot? A person who doesn't know is going to think that  
16 bag is broken. A person that doesn't know is going to pull on  
17 it. They are going to try to open it.

18 How is this drug trafficker, how does he not know or  
19 she not know that they don't try poking in there to shake it  
20 loose? That's thousands of dollars of product, and they are  
21 just sending it off. They are taking that risk, not a chance?  
22 There is -- ladies and gentlemen, there are many risks that are  
23 beyond the control of someone who is trying to get drugs in the  
24 country. If the bag is searched, they can't control that. If  
25 the hiding place holds up itself, if there is drug sniffing

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1 dogs when they get to the airport, those are things they can't  
2 control.

3 But what can they control? They can control how it's  
4 hidden and who brings it in. This is a good hiding spot and  
5 it's got a built-in defense with it. No question about it. It  
6 allows whoever brought it in to say, I don't know, the bag was  
7 empty, how am I supposed to check the rails? Because it's your  
8 suitcase because, you extend it and close your suitcase all the  
9 time before they put drugs in there, before it was shrunk down  
10 to that size. That's how you know.

11 That built-in defense aside, talk about the drug  
12 traffickers themselves, those are the variables they have some  
13 control over, right, and when they have that much on the line,  
14 they have that much at stake, these people whoever it was, who  
15 sent these bags over, and had the defendant send them, whether  
16 it was the defendant herself or whoever, we don't have to prove  
17 that. That's not what this case is about.

18 But these bags were very specially designed. The  
19 hiding place was made to avoid detection. They were reducing  
20 the risk. Why would someone take all the effort to recreate  
21 these bags to carry cocaine and give them to someone who didn't  
22 know? They wouldn't. They wouldn't. It doesn't matter how  
23 well hidden the drugs are, if the person you send doesn't get  
24 them to where they are supposed to go, ladies and gentlemen.

25 Even the small bag. You heard the evidence that the

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1 small bag the extendible handrail, was filled all the way to  
2 the top. I explained to you that difference. It doesn't have  
3 to be that, well, since the small bag extends all the way and  
4 then that whole theory that the altered handrail on the larger  
5 bag doesn't hold water. Of course it does. The smaller bag  
6 couldn't be altered that way. It would be a child's bag. She  
7 would be walking around the airport leaning over. It would be  
8 obvious, and it was still obvious and it's obvious with the  
9 larger bag, as you have seen.

10 Can I have the ELMO.

11 THE COURT: Mr. Scotti, you are going for ten minutes.  
12 It's getting a little repetitious. The purpose of rebuttal is  
13 not to repeat what you said on summation.

14 MR. SCOTTI: Understood, your Honor. I will wrap up.

15 Ladies and gentlemen, just to conclude, look at the  
16 difference in those bags. There was cocaine in the smaller  
17 bag, but the small bag had a normal handrail. That handrail on  
18 the larger bag is one-third the length. This is not something  
19 that the defendant can just ignore, that she could say I don't  
20 know, I thought maybe the handrail they made for my larger bag  
21 just didn't extend all the way.

22 What does your common sense tell you about that? It  
23 tells you that that can't be true.

24 This is not a coincidence. Defendant is not just the  
25 most unlucky person in the world. Someone got to her bags,

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1 they took them apart, they filled them with cocaine, they put  
2 them back together, they sent her over here, and then who knows  
3 how they were going to get it back from her, but they were  
4 going to. Hopefully they get it back. That's not what  
5 happened, ladies and gentlemen; and you know that from common  
6 sense, not from speculation. This case is about your common  
7 sense. They were the defendant's bags. The drugs were inside,  
8 she is was caught. She tried to get it through, and she was  
9 caught.

10 Ladies and gentlemen, at this point in the case, the  
11 government has proved to you beyond a reasonable doubt that the  
12 defendant knowingly imported cocaine into the United States and  
13 knowingly possessed it with the intent to distribute. Thank  
14 you.

15 THE COURT: Thank you, Mr. Scotti.

16 So rather than to really give you the charge late this  
17 afternoon -- it will take about a half hour or so -- I think  
18 it's best if we just get a good night's sleep and come back  
19 tomorrow morning fresh at ten o'clock. And you will hear me  
20 explain the law to you at that time, and then you will commence  
21 your deliberation. All right.

22 So don't talk to anybody. You have been fine. Just  
23 resist the temptation. You have heard all the arguments.  
24 Don't go home and check it out with anybody back home. It  
25 would be the wrong thing to do. That would be a violation of

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1 your oath.

2 So I expect you all to be like as pure as Caesar's  
3 husband -- and you can get away with it because I'm not going  
4 to be there to supervise you -- but I don't think you want to  
5 do that. You want to base your decision tomorrow or whenever  
6 on the evidence.

7 You heard all the arguments. You know the case now.  
8 You will have a chance to discuss it amongst yourselves during  
9 deliberations, and we will see you tomorrow at ten o'clock.

10 THE CLERK: All rise.

11 (Jury exits.)

12 THE CLERK: You can all be seated.

13 THE COURT: All right, folks. Mr. Johnson, my law  
14 clerk, is going to hand out to you the charge.

15 I will make a couple of little small nonsubstantive  
16 changes. You may pick up other things. I'm not going to give  
17 it to the jurors. It's short. I don't have to give it to  
18 them, and you will notice on page 16 I'm going to put in -- the  
19 document is not in evidence -- after I talk about the  
20 defendant's right not to testify on page 17 and then I'm just  
21 changing the next to last line on 17 to refer to her rather to  
22 either of them in the plural. So you may find other little  
23 things after you look at it, but it's basically, I think, in  
24 good shape.

25 The exhibit, the verdict sheet, has just the two

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1 counts and, you know, I will see you. Why don't you take a  
2 look at it now. We have a little bit of time. It's very  
3 short, and if you have any real requests or anything that  
4 concerns you, I have to be here for a five o'clock. I have a  
5 conference on a civil matter. So take a look at it now, and if  
6 you have anything further you can tell me before you leave.  
7 Okay. And I will be back here about a quarter to 5:00 or  
8 thereabouts.

9 Mike, the civil people, are they here yet?

10 THE CLERK: Actually, it's by telephone. So we can do  
11 it in chambers at your leisure.

12 THE COURT: Let's it now. Off the record.

13 (Recess.)

14 o o o

15  
16 Certified to be a true and accurate transcript.

17 /s/ Michele Nardone

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